

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
Beacon Solar Energy Project by) 08-AFC-2
Beacon Solar, LLC)
_____)

CALIFORNIA CITY COUNCIL CHAMBERS
CITY HALL
2100 HACIENDA BOULEVARD
CALIFORNIA CITY, CALIFORNIA 93505

MONDAY, MARCH 22, 2010

10:03 A.M.

Reported by: Martha L. Nelson, CERT
Transcribed by: Margo D. Hewitt, CET**00480
Contract No. 170-08-001

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

HEARING OFFICER, ADVISERS and STAFF PRESENT

Kenneth Celli, Hearing Officer

Galen Lemei, Adviser

Jared Babula, Senior Staff Counsel

Eric K. Solorio, Project Manager

PUBLIC ADVISER

Jim Davis

APPLICANT

Jane E. Luckhardt, Attorney

Downey Brand Attorneys, LLP

Scott Busa, Director

Kenneth Stein, Environmental Manager

Nextera Energy Resources

Sara J. Head, Project Manager

AECOM

INTERVENOR

Tanya Gulesserian, Attorney

Adams Broadwell Joseph and Cardozo

representing California Unions for Reliable Energy

ALSO PRESENT

Don Maben, Supervisor, Second District

Lorelei Oviatt, Acting Planning Director

County of Kern

Richard Booth

Lahontan Regional Water Quality Control Board

ALSO PRESENT

Julie Vance
California Department of Fish and Game

Judy Hohman
United States Fish and Wildlife Service

Bob Scherer, Vice President
Dennis LaMoreaux
Jack Stewart
Rosamond Community Services District

Mike Bevins, Public Works Director
City of California City

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

I N D E X

	Page
Proceedings	1
Opening Remarks	1
Presiding Member Douglas	1
Introductions	1
Hearing Officer Celli	4
Background and Overview	6
Oath - Eric Solorio; Scott Busa	10
Undisputed Topics	10
Executive summary	
Applicant Exhibits	12/13
CEC Staff exhibit 500, FSA	14/15
CEC Staff exhibits 501 through 505	13/16
CEC Staff exhibit 506	16/16
Traffic and transportation	17
Applicant Exhibits	17/17
Transmission line safety and nuisance	
Applicant Exhibits	18/19
Facility design	19
Applicant Exhibits	19/21
Geology and Paleontology	22
Applicant Exhibits	22/23
Power plant efficiency	23
Applicant Exhibits	23/13
Air quality	23
Applicant Exhibits	23/26
Exhibit 212 - withdrawn	26
Public health	26
Applicant Exhibits	26/26

I N D E X

	Page
Undisputed Topics - continued	
Socioeconomic resources	26
Applicant Exhibits	26/27
Noise and vibration	27
Applicant Exhibits	27/28
Power plant reliability	28
Applicant Exhibits	28/28
Worker safety and fire protection	28
Applicant Exhibits	28/29
Land use	29
Applicant Exhibits	29/30
Cultural Resources	31
Applicant Exhibits	31/35
Disputed Topics	36
Visual Resources	41
Applicant witnesses M.Paulson,K.Stein	41
Direct Examination by Ms. Luckhardt	41
Exhibits	41/43
Cross-Examination by Mr. Babula	55
CEC Staff witness M. Hamblin	153
Direct Examination by Mr. Babula	156
Cross-Examination by Ms. Luckhardt	160
Redirect Examination by Mr. Babula	174
Recross-Examination by Ms. Luckhardt	178
Soil and Water	62
Applicant Exhibits (Hydrology)	64/65
Applicant Exhibits (Soil)	66/66
Applicant Exhibits (Water)	66/69
CEC Staff witnesses C.Weaver, J.Fio	98
Direct Examination by Mr. Babula	99
Cross-Examination by Ms. Gulesserian	104

I N D E X

	Page
Disputed Topics - continued	
Soil and Water - continued	
CURE Exhibits - Transmission System Engineering, Water Resources and Alternatives	73/76
CURE witness D.Marcus	88
Direct Examination by Ms. Gulesserian	89
Cross-Examination by Mr. Babula	96
Applicant Exhibits	416/418
Afternoon Session	129
Soil and Water - continued	129
CEC Staff-Sponsored witnesses M.Bevins; Dennis LaMoreaux	129
Exhibit 506	130/
Direct Examination by Mr. Babula	130
Cross-Examination by Ms. Luckhardt	135
Cross-Examination by Ms. Gulesserian	137
Transmission System Engineering	181
Applicant witnesses D. McCloud;M.Flack; and S.Busa	181
Cross-Examination by Ms. Gulesserian	182
Panel witnesses, D. Marcus; S.Richards; M.Hesters; S.Arachchige	188
Direct Examination by Ms. Gulesserian	189
Cross-Examination by Mr. Babula	192
Cross-Examination by Ms. Luckhardt	194
Redirect Examination by Ms. Gulesserian	201
CURE Exhibit 638	201/203
Direct Examination by Mr. Babula	205
Cross-Examination by Ms. Luckhardt	212
Direct Examination by Ms. Luckhardt	215
Applicant Exhibit 334	216/216
Cross-Examination by Ms. Gulesserian	216
Biological Resources	230
Applicant Exhibits	231/244

I N D E X

	Page
Biological Resources - continued	
CURE witness M.Bias	247
Direct Examination by Ms. Gulesserian	247
Cross-Examination by Mr. Babula	257
Cross-Examination by Ms. Luckhardt	262
Redirect Examination by Ms. Gulesserian	270
Applicant witnesses K.Stein; J.Guigliano;	
A.Karl, P.Leitner	245
Direct Examination by Ms. Luckhardt	274
Cross-Examination by Ms. Gulesserian	286
Cross-Examination by Mr. Babula	311
Direct Examination by Ms. Luckhardt	314
Direct Examination by Ms. Luckhardt	318
Cross-Examination by Ms. Gulesserian	322
Cross-Examination by Mr. Babula	339
CEC Staff witnesses J.Vance; S.Sanders;	
J.Hohman; E.Solorio	246
Direct Examination by Mr. Babula	343
Cross-Examination by Ms. Luckhardt	351
Cross-Examination by Ms. Gulesserian	352, 374
CURE Exhibit 639	355/356
Examination by Hearing Officer Celli	373
Public Comment	379
Disputed Topics - continued	416
Hazardous Materials and Waste Management	420
CURE Witness M. Hagemann	420
Direct Examination by Ms. Gulesserian	420
Cross-Examination by Mr. Babula	434
Cross-Examination by Ms. Luckhardt	440
Applicant Witnesses D.McCloud; M.Flack	
Direct Examination by Ms. Luckhardt	454
Applicant Exhibits	448/449
Applicant Exhibits	450/451
Cross-Examination by Ms. Gulesserian	470
Redirect Examination by Ms. Luckhardt	486

I N D E X

	Page
All Parties' Exhibits	453
Disputed Topics - continued	
Hazardous Materials and Waste Management, continued	
CEC Witnesses E.Townsend-Hough;G.Lesh	489
Direct Examination by Mr. Babula	489
Cross-Examination by Ms. Gulesserian	496
Project Description	419
Applicant Exhibits	419/419
Tentative Briefing Schedule	506
Closing Remarks	510
Presiding Member Douglas	510
Adjournment	510
Reporter/Transcriber Certificates	511

1 P R O C E E D I N G S

2 10:15 a.m.

3 PRESIDING MEMBER DOUGLAS: Good morning,
4 everybody. Welcome to the Beacon Solar Energy
5 project evidentiary hearing. The Committee
6 Members assigned to this case are Commissioner
7 Karen Douglas, which is me; I'm the Presiding
8 Member of the Committee. And Commissioner Jeff
9 Byron.

10 To my left is Hearing Officer Ken Celli,
11 who will be running the proceeding. And to my
12 right is my Adviser, Galen Lemei.

13 At this point we'll take introductions
14 from the parties beginning with Commission Staff.

15 MR. BABULA: My name is Jared Babula;
16 I'm Staff Counsel. And I'm sitting next to Eric
17 Solorio, who is the Project Manager.

18 PRESIDING MEMBER DOUGLAS: Thank you.
19 And applicant.

20 MS. LUCKHARDT: My name is Jane
21 Luckhardt and I'm Project Counsel.

22 MR. BUSA: My name is Scott Busa; I'm
23 with the Business Development Group of Nextera
24 Energy. And I'm responsible for the overall
25 development of the project.

1 MR. STEIN: Kenny Stein, Environmental
2 Manager with the Beacon project.

3 PRESIDING MEMBER DOUGLAS: Thank you.
4 And are there intervenors?

5 MS. GULESSERIAN: Good morning. Tanya
6 Gulesserian, Attorney for California Unions for
7 Reliable Energy, intervenor in this proceeding.
8 Thank you.

9 HEARING OFFICER CELLI: Tanya, could you
10 please introduce your --

11 MS. GULESSERIAN: Yes. This is Michael
12 Bias, consultant for CURE.

13 PRESIDING MEMBER DOUGLAS: Thank you.
14 Are there any elected officials here today? Could
15 you please --

16 SUPERVISOR MABEN: Sure. I'm Don Maben,
17 Second District Supervisor, Kern County.

18 PRESIDING MEMBER DOUGLAS: Thank you.
19 Are there any governmental agencies here today?

20 DR. SCHERER: I'm Bob Scherer, Vice
21 President, Rosamond Community Service District.

22 MS. OVIATT: Lorelei Oviatt, Acting
23 Planning Director of Kern County.

24 PRESIDING MEMBER DOUGLAS: Thank you.

25 MR. LaMOREAUX: Dennis LaMoreaux,

1 Rosamond Community Services District.

2 HEARING OFFICER CELLI: I'm sorry, I
3 didn't get your name, sir.

4 MR. STEWART: Jack Stewart, Rosamond
5 Community Services District.

6 HEARING OFFICER CELLI: Thanks.

7 MR BEVINS: I'm Mike Bevins, Public
8 Works Director for the City of California City.

9 MR. SPEAKER: Elected officials.

10 PRESIDING MEMBER DOUGLAS: No, we're on
11 government agencies. Are there other government
12 agencies here?

13 MR. BOOTH: Richard Booth, Lahontan
14 Water Board.

15 PRESIDING MEMBER DOUGLAS: Any more
16 government agencies represented here today?

17 MS. VANCE: Julie Vance, Fish and Game
18 out of Fresno.

19 MS. HOHMAN: Judy Hohman with Fish and
20 Wildlife Service out of Ventura.

21 PRESIDING MEMBER DOUGLAS: Very good.
22 And then Jim Davis, the Public Adviser
23 representative, is in the back of the room. Jim,
24 if you could wave your hand. He waved a hand with
25 a blue card in it, so we'll have an opportunity in

1 a moment to talk about blue cards.

2 All right, at this point I'll turn over
3 the hearing to Hearing Officer Celli to begin the
4 proceeding.

5 HEARING OFFICER CELLI: Thank you,
6 Chairman. Good morning. Can everyone hear me
7 okay?

8 I wanted to just first say that we are
9 also simultaneously webcasting this hearing today.
10 And there are people who are on the phone who can
11 hear us, but we can't hear you because I have
12 muted you until the public comment period. So I
13 know you're there.

14 And if you need to you can send me a
15 chat message, if necessary. But I don't know if
16 I'm going to be able to get to it immediately.
17 But just so you know, you will have a chance to
18 make a public comment later on in the proceedings.

19 MR. BABULA: Actually, I have to ask
20 you. I was going to have the Air District call
21 in, and so they might be on the line now. And
22 then also Mark Hesters and Sudath were going to
23 call in at 10:00 so we could tell them when to
24 call back for transmission, because I believe we
25 weren't able to resolve that with CURE. So

1 they're teed up to just have a short discussion on
2 transmission.

3 HEARING OFFICER CELLI: Thank you, Mr.
4 Babula. I just want you to know that right now I
5 have an A. Brant, Elizabeth Klebanur, Klebanur,
6 I'm sorry, K-l-e-b-a-n-u-r, Casey Box, Rachel Cos
7 was on, but then is off.

8 And then I have four unnamed callers,
9 which one of whom is probably Rachel, and one of
10 them is Elizabeth Klebanur, because what happens
11 is people hang up and then they call back.

12 Just so people are aware, it's a lot
13 easier if you actually use the WebEx system, go
14 online as explained in the notice. And then the
15 system will call you, and you won't have to call
16 in. And then we can see that you're on the line
17 and you can raise your hand if you want to make a
18 comment later.

19 So, all your witnesses will need to do
20 is call in to WebEx -- well, I mean the WebEx will
21 call them. They'll just be another, and they'll
22 identify themselves. And we'll know that they're
23 there.

24 As to the Public Adviser, Jim Davis, who
25 is standing in the back holding up these blue

1 cards. If you wish to make a comment today, just
2 go to see Jim Davis and fill out a blue card. And
3 in the public comment section of our hearings
4 today we will call your names in the order that we
5 receive them.

6 The evidentiary hearing is a formal
7 adjudicatory proceeding to receive evidence into
8 the formal evidentiary record from the parties.
9 Only the parties, which are in this case the
10 applicant, the intervenor CURE, California Unions
11 for Reliable Energy, and Energy Commission Staff,
12 may present evidence for introduction into the
13 formal evidentiary record, which is the only
14 evidence upon which the Commission may base its
15 decision under the law.

16 Technical rules of evidence are
17 generally followed. However any relevant,
18 noncumulative evidence may be admitted if it is
19 the sort of evidence upon which responsible
20 persons are accustomed to rely in the conduct of
21 serious affairs.

22 Testimony offered by the parties shall
23 be under oath. Each party has the right to
24 present and cross-examine witnesses, introduce
25 exhibits and to rebut evidence of another party.

1 Questions of relevance will be decided
2 by the Committee. Hearsay evidence may be used to
3 supplement or explain other evidence, but shall
4 not be sufficient, in itself, to support a finding
5 under our regulations section 1212.

6 The Committee will rule on motions and
7 objections. The Committee may take official
8 notice of matters within the Energy Commission's
9 field of competence, and of any fact that may be
10 judicially noticed under the California courts.

11 The official record of this proceeding
12 includes sworn testimony of the parties'
13 witnesses, the reporter's transcript of the
14 evidentiary hearing, the exhibits received into
15 evidence, briefs, pleadings, orders, notices and
16 comments submitted by members of the public.

17 The Committee's decision will be based
18 solely on the record of competent evidence in
19 order to determine whether the project complies
20 with the applicable law.

21 Members of the public who are not
22 parties are welcome and invited to observe these
23 proceedings. There will also be an opportunity
24 for the public to provide comment before we close
25 this hearing later today, this evening.

1 Depending on the numbers of persons who
2 wish to speak the Committee may limit the time
3 allowed for each speaker. This public comment
4 period is intended to provide an opportunity for
5 persons who attend the hearing in person to
6 address the Committee.

7 It is not an opportunity to present
8 written, recorded or documentary materials.
9 However, such materials may be docketed and
10 submitted to the Energy Commission for inclusion
11 in the administrative record.

12 Members of the public who wish to speak
13 should fill out a blue card provided by the Public
14 Adviser. And if you would prefer not to speak
15 publicly, which you do not have to, but would like
16 to submit a written comment, the blue card has a
17 space to do so.

18 The witness list and the exhibit list
19 have been distributed to the parties
20 electronically. And the parties were asked to
21 bring copies for their use today. We will use
22 these lists to organize receipt of evidence into
23 the record.

24 There are several uncontested topics
25 identified in the topic and witness list. None of

1 the parties have filed any objection to submittal
2 of these topics by declaration.

3 First, the way that we will proceed is
4 that we will allow the applicant to offer into
5 evidence the relevant sections of the AFC, which
6 is the application for certification. You're
7 going to hear us talk about the AFC a lot. You
8 may hear us talk about the FSA or the SA, which is
9 the final staff assessment or staff assessment.
10 So hopefully we'll keep you informed of the
11 acronyms as they fly by.

12 But the applicant's evidence is the AFC,
13 relevant supplements and their testimony in
14 support of the uncontested topics.

15 Then we will ask staff to offer those
16 sections of the FSA, final staff assessment, and
17 supplemental testimony, which constitute their
18 testimony in support of the uncontested topics.

19 Finally, CURE -- we refer to CURE as
20 CURE, which is California Unions for Reliable
21 Energy, C-U-R-E. CURE will offer their evidence
22 of the uncontested topics in the record.

23 After that parties may offer their
24 listed exhibits as to the contested topics into
25 the evidence.

1 We will proceed through the uncontested
2 topics at this time. And applicant and staff's
3 project managers will be sworn. If you would,
4 just have Mr. Solorio and Mr. Busa, or is it Mr.
5 Stein? If you would please stand and be sworn at
6 this time.

7 Whereupon,

8 ERIC SOLORIO and SCOTT BUSA
9 were called as witnesses herein, and after first
10 having been duly sworn, were examined and
11 testified as follows:

12 HEARING OFFICER CELLI: The parties
13 agree that the following topics set forth in the
14 application for certification and the final staff
15 analysis are undisputed; and that evidence and
16 testimony on these topics shall be solely entered
17 by declaration.

18 The order that I'm going to proceed in
19 is the order that they showed up in our witness
20 list that we provided at the prehearing
21 conference.

22 Executive summary; traffic and
23 transportation; transmission line safety and
24 nuisance; facility design; geology and
25 paleontology; power plant efficiency; air quality;

1 public health; socioeconomic resources; noise and
2 vibration; power plant reliability; worker safety
3 and fire protection and land use.

4 So those are the topic areas that are
5 uncontested by the parties, and we're going to
6 accept that evidence by way of declaration.

7 We would move first with the applicant.
8 If I could just have a moment so I can get your
9 list out. Applicant, do you wish to move evidence
10 into the record at this time with regard to
11 executive summary.

12 MS. LUCKHARDT: Applicant moves exhibit
13 number 1, 58, 77, 93, 124, 125, 279, 289, 309 and
14 322 all on executive summary into the record at
15 this time.

16 HEARING OFFICER CELLI: Any objection,
17 staff?

18 MR. BABULA: No objection.

19 HEARING OFFICER CELLI: Any objection
20 from CURE?

21 MS. GULESSERIAN: No objection.

22 HEARING OFFICER CELLI: I'm just going
23 to ask, please, Ms. Luckhardt, if you wouldn't
24 mind, for the record saying exhibit 1 is AFC
25 section 1 executive summary. Exhibit 2 or exhibit

1 58 is slide presentation. And just a quick
2 identifier so we know in the record what those
3 exhibits are.

4 MS. LUCKHARDT: Trying to be efficient.

5 HEARING OFFICER CELLI: And I --

6 MS. LUCKHARDT: Would you like me to go
7 back through that?

8 HEARING OFFICER CELLI: -- I'd greatly
9 appreciate it, but that's how we should --

10 MS. LUCKHARDT: Do you want me to go
11 back through that?

12 HEARING OFFICER CELLI: That's great.

13 MS. LUCKHARDT: Exhibit 1 is AFC section
14 1; exhibit 58 is the slide presentation from the
15 informational hearing; exhibit 77 are the
16 responses to questions from Rancho Seco residents
17 set 1; exhibit 93 is responses to questions from
18 Rancho Seco residents set 2; 124 is the PSA
19 comments, the introduction.

20 Exhibit 125 are the PSA comments,
21 executive summary; 279 is the declaration of
22 Kenneth Stein; exhibit 289 is declaration of Meg
23 Russell; exhibit 309 is the declaration of Scott
24 Busa; and exhibit 322 is the declaration of
25 Kenneth Stein on overriding considerations.

1 HEARING OFFICER CELLI: Thank you.

2 Exhibit 1, 58, 77, 93, 124, 125, 279, 289, 209 and
3 322 for identification are received into evidence.

4 Next is traffic and transportation.

5 MS. LUCKHARDT: Are you going to move
6 staff individually by subject area, or are you
7 going to do it --

8 HEARING OFFICER CELLI: Staff has how
9 many? You have about six exhibits?

10 MR. BABULA: Well, we've got the --
11 exhibit 500 would be the FSA. And then these
12 other exhibits -- exhibit 500 is the FSA, so that
13 could just come in, because that's all the
14 declarations all at once, or for the components
15 that aren't in contention.

16 HEARING OFFICER CELLI: I have 500 is
17 the FSA; 501 is the soil and water; 502 is bio;
18 503 is cultural; 504 is HTF, fluid leak
19 prevention.

20 MR. BABULA: Right, but that's --

21 HEARING OFFICER CELLI: And 505 is
22 vision, correct?

23 MR. BABULA: Well, the 504, I believe,
24 is part of the HTF, which is contested, so that
25 wouldn't come in in this initial part here.

1 These other ones I have witnesses to
2 sponsor, but these came post-FSA, so there's no --
3 I'm not sure how you wanted to do --

4 HEARING OFFICER CELLI: You have
5 declarations?

6 MR. BABULA: Well, I do in the FSA, but
7 these were supplemental. If you want to just use
8 the same declaration for the parts that were
9 modifications to the conditions of certification,
10 then we can go ahead and just incorporate it
11 through their declarations and the authors. I
12 wasn't sure.

13 Now, 504 there is a declaration for
14 Geoffrey Lesh, so that could come in. And then
15 505 has a declaration. So we're okay there. 506,
16 we have the Cal City and Rosamond people here to
17 sponsor exhibit 506.

18 So I was going to do it when we get to
19 each section, since those people would be up here.

20 HEARING OFFICER CELLI: At this time is
21 there any objection from staff to the receipt of
22 exhibit 500 into the record from applicant?

23 MS. LUCKHARDT: Applicant has no
24 objection.

25 HEARING OFFICER CELLI: CURE, any

1 objection to 500?

2 MS. GULESSERIAN: CURE has no objection.

3 HEARING OFFICER CELLI: Okay, at this
4 time 500 has been received into evidence. That is
5 the final staff assessment received into evidence.

6 Anything else we can take care of
7 efficiently right now that's not contested and has
8 a declaration supporting it?

9 MR. BABULA: Well, 501, 502, 503, which
10 would be changes that we agreed to with the
11 applicant and with the conditions of certification
12 of those areas, there's been other more recent
13 versions of them which we discussed at the
14 prefiling conference we would just kind of
15 stipulate with the applicant when we agreed with.
16 So I wasn't exactly sure how you wanted to handle
17 those.

18 HEARING OFFICER CELLI: Here's what I'm
19 thinking of doing. In the interests of time,
20 then, is there a motion by staff to conditionally
21 introduce exhibits 501 through 505. And what we
22 will do then is I'm planning on receiving that
23 evidence subject to objection later as we get into
24 those topic areas.

25 So, is that your motion?

1 MR. BABULA: I do make that motion,
2 yeah.

3 HEARING OFFICER CELLI: Please do.

4 MR. BABULA: Okay, I would make a motion
5 to receive exhibits 501, 502, 503, 504, 505 and
6 506 into the record. And then --

7 HEARING OFFICER CELLI: What is exhibit
8 506?

9 MR. BABULA: That would be -- 506 is the
10 proposal from California City and the Rosamond.
11 It's the docketed material that has been submitted
12 to the dockets over the last year regarding the
13 proposed cost and alignment, the different
14 recycled water options.

15 HEARING OFFICER CELLI: Applicant, any
16 objection to exhibits 501, 502, 503, 504, 505 and
17 506 being entered into evidence at this time?

18 MS. LUCKHARDT: We have no objection.

19 HEARING OFFICER CELLI: CURE, any
20 objection to exhibits 501, 502, 503, 504, 505 and
21 506 being received into evidence at this time?

22 MS. GULESSERIAN: CURE has no objection.

23 HEARING OFFICER CELLI: Thank you.
24 Exhibits 500, 501, 502, 503, 504, 505 and 506 will
25 be received into evidence.

1 We are now on traffic and
2 transportation. Applicant.

3 MS. LUCKHARDT: Applicant moves exhibit
4 numbers 17, section 5.3 of the AFC; exhibit number
5 118, the preliminary PSA comments on traffic and
6 transportation; exhibit number 143, the actual PSA
7 comments on traffic and transportation; exhibit
8 173, section -- the project design refinements,
9 section 1.4.6. Exhibit 180, project design
10 refinements, section 4.2.4.

11 Exhibit 252, declaration of Duane
12 McCloud; exhibit 267, declaration of Jared Foster;
13 exhibit 278, declaration of John Wilson.

14 HEARING OFFICER CELLI: CURE, any
15 objection to exhibits 17, 118, 143, 173, 180, 252,
16 267 and 278 being admitted into evidence?

17 MS. GULESSERIAN: CURE has no objection.

18 HEARING OFFICER CELLI: Staff, any
19 objection to 17, 118, 143, --

20 MR. BABULA: No objection.

21 HEARING OFFICER CELLI: Thank you.
22 Exhibits 17, 118, 143, 173, 180, 252, 267 and 278
23 for identification are received into evidence
24 under the topic of traffic and transportation.
25 Thank you.

1 Transmission line safety and nuisance.

2 MS. LUCKHARDT: The applicant moves
3 exhibit 18, AFC section 514; exhibit 44, AFC
4 appendix K-2; exhibit 67, response to CEC data
5 requests 50 through 53; exhibit 76, supplemental
6 response to data requests 50 to 52, with
7 attachment DR-50.

8 Exhibit 192, the project design
9 refinements, figure 6; exhibit 255, declaration of
10 Duane McCloud; exhibit 313, declaration of Scott
11 Busa; exhibit 320, declaration of Steve Richards;
12 exhibit 334, I think we will probably bring in
13 under transmission system engineering unless
14 there's no objection to bringing that in at this
15 time.

16 HEARING OFFICER CELLI: CURE, any
17 objection to 334 coming in at this time?

18 MS. GULESSERIAN: CURE has no objection.

19 HEARING OFFICER CELLI: Very good. And
20 18, 44, 67, 76, 192, 255, 313 and 320, any
21 objection by CURE?

22 MS. GULESSERIAN: CURE has no objection.

23 HEARING OFFICER CELLI: Staff, any
24 objection to those?

25 MR. BABULA: No objection.

1 HEARING OFFICER CELLI: Thank you, at
2 this time 18, 44, 67, 76, 192, 255, 313, 320 and
3 334, marked for identification, are now received
4 into evidence as exhibits 18, 44, 67, 76, 192,
5 255, 313, 320 and 334.

6 Facility design.

7 MS. LUCKHARDT: In the area of facility
8 design, applicant moves exhibit number 26, the AFC
9 appendix C-1; exhibit 27, AFC appendix C-2;
10 exhibit 28, AFC appendix C-3; exhibit 29, AFC
11 appendix C-4; exhibit 30, AFC appendix C-5;
12 exhibit 31, AFC appendix C-6.

13 Exhibit 95, email from Kenny Stein;
14 exhibit 98, email from Kenny Stein dated 12/22/08;
15 exhibit 101, another email from Kenny Stein dated
16 1/13/09.

17 Exhibit 137, the PSA comments on
18 engineering; exhibit 149, the PSA comments on
19 general conditions; exhibit 154, the project
20 design refinement section 1 and section 5; exhibit
21 155, the project design refinement section 2.1.

22 Exhibit 157, project design refinement
23 section 2.1.2; exhibit 158, project design
24 refinement section 2.1.3; exhibit 159, project
25 design refinement section 2.1.5; exhibit 160,

1 project design refinement section 2.1.6.

2 Exhibit 161, project design refinement
3 section 2.1.7; exhibit 162, project design
4 refinement section 2.1.8; exhibit 165, project
5 design refinement section 2.2.

6 Exhibit 190, project design refinement
7 figure 3; exhibit 191, project design refinement
8 figure 5; exhibit 196, project design refinement
9 attachment 2; exhibit 197, project design
10 refinements attachment 3.

11 Exhibit 239, declaration of Bob Anders;
12 exhibit 244, declaration of Dan Sampson; exhibit
13 256, declaration of Duane McCloud; exhibit 264,
14 declaration of Janine Forrest; exhibit 270,
15 declaration of Jared Foster; exhibit 286,
16 declaration of Kenneth Stein.

17 Exhibit 311, declaration of Scott Busa
18 on facility design. And exhibit 316, which is
19 another declaration of -- or declaration of Scott
20 Stern on facility design; exhibit 319, declaration
21 of Steve Richards on facility design.

22 HEARING OFFICER CELLI: Thank you. Any
23 objection to any of those exhibits marked for
24 identification by CURE?

25 MS. GULESSERIAN: CURE has no

1 objections.

2 HEARING OFFICER CELLI: Any objection
3 from staff on the exhibits for facility design?

4 MR. BABULA: No, no objections. I would
5 like to make a suggestion. Staff and the
6 applicant have resolved all our issues. And I
7 would accept all these things coming in, instead
8 of doing one by one. Can we just --

9 HEARING OFFICER CELLI: I just need to
10 get -- have them in the record, so --

11 MR. BABULA: Can we just submit the
12 exhibit list and say they were all admitted,
13 unless CURE has a specific objection to one?

14 HEARING OFFICER CELLI: Actually, you
15 know, I have to make the transcript. So it's got
16 to be in the transcript.

17 MR. BABULA: Okay.

18 HEARING OFFICER CELLI: So, my
19 apologies. Patience is noted. I have to put it
20 in the record.

21 So, with that, the exhibits marked for
22 identification 26, 27, 28, 29, 30, 31, 95, 98,
23 101, 147, 149, 154, 155, 157, 158, 159, 160, 161,
24 162, 165, 190, 191, 196, 197, 239, 244, 256, 264,
25 270, 286, 311, 316 and 319 are received into

1 evidence.

2 Geology and paleontology.

3 MS. LUCKHARDT: Applicant moves exhibit
4 9, AFC section 5.5; exhibit 24, AFC appendix B.1;
5 exhibit 25, AFC appendix B.2; exhibit 54, the data
6 adequacy supplement on geological hazards; exhibit
7 236, declaration of Bob Anders; exhibit 293, the
8 declaration of Mike Flack. And that should be, on
9 293, one of the corrections that we found on
10 Friday was it should say geology, not
11 geoarcheology. Just simply a typographical error.

12 HEARING OFFICER CELLI: And then we have
13 paleontology on page 8 of your last --

14 MS. LUCKHARDT: In the area of
15 paleontology, applicant moves exhibit number 13,
16 AFC section 5.9; exhibit number 39, AFC section H
17 -- or appendix H; exhibit 148, the PSA comments on
18 geology and paleontology; exhibit 201, the project
19 design refinements, attachment 4-D; exhibit 241,
20 declaration of Kara Pasetti; exhibit 284,
21 declaration of Kenneth Stein.

22 HEARING OFFICER CELLI: Any objection to
23 these exhibits by CURE?

24 MS. GULESSERIAN: CURE has no
25 objections.

1 HEARING OFFICER CELLI: Any objection by
2 staff?

3 MR. BABULA: No objections.

4 HEARING OFFICER CELLI: Exhibits marked
5 for identification 9, 24, 25, 54, 236, 293, 13,
6 39, 148, 201, 241, 284 are received into evidence.

7 Power plant efficiency.

8 MS. LUCKHARDT: For power plant
9 efficiency applicants' exhibits in this area are
10 contained within project description and facility
11 design.

12 HEARING OFFICER CELLI: Okay. So that
13 means that when we get -- we've already received
14 project description -- or not project description
15 -- executive summary. So those were received in
16 the executive summary. And then there's going to
17 be others under project description?

18 MS. LUCKHARDT: Correct.

19 HEARING OFFICER CELLI: Air quality.

20 MS. LUCKHARDT: Okay, under air quality
21 applicant moves exhibit 6, AFC section 5-2;
22 exhibit 33, AFC appendix E; exhibit 34, AFC
23 appendix E-4; exhibit 50, the application for the
24 final determination of compliance.

25 Exhibit 51, the data adequacy supplement

1 on air quality; exhibit 60, responses to CEC data
2 requests 1 through 3 and 7 through 12; exhibit 61,
3 responses to CEC data request, attachment DR-10;
4 exhibit 72, supplemental responses to CEC data
5 request 4, 5, 6 and 12, and attachment DR-5.

6 Exhibit 96, email from Sara Head to Will
7 Walters, dated 12/12/08; exhibit 99, construction
8 greenhouse gas calculations; exhibit 113, the
9 preliminary PSA comments on air quality; exhibit
10 128, the PSA comments on air quality.

11 Exhibit 163, the project design
12 refinements section 2.1.9; exhibit 170, project
13 design refinements section 4.1.1; exhibit 176,
14 project design refinements section 4.2.1; exhibit
15 204, project design refinements attachment 7-A;
16 exhibit 205, project design refinements attachment
17 7-B; exhibit 206, project design refinements
18 attachment 7-C; exhibit 207, project design
19 refinements attachment 7-D.

20 Exhibit 209, air modeling files; exhibit
21 211, revised application for final determination
22 of compliance; exhibit 212 is something that was
23 not filed in the proceeding, so we are not
24 offering it into evidence.

25 Exhibit 214, response to air quality

1 questions from a workshop; exhibit 232 is the Kern
2 County Air Pollution Control District revised
3 final determination of compliance.

4 Exhibit 247, a declaration of Duane
5 McCloud on air quality; exhibit 259, the
6 declaration of Glenn King in air resources;
7 exhibit 261, the declaration of Howard Valentine;
8 exhibit 281, the declaration of Kenneth Stein in
9 air quality; exhibit 301, the declaration of Russ
10 Kingsley. There are two of these, this is the
11 first one on air quality. Exhibit 302 is another
12 declaration of Russ Kingsley on air quality.

13 We also have two from Sara Head, 305 is
14 the first declaration of Sara Head on air quality.
15 And exhibit 306 is the second declaration from
16 Sara Head on air quality.

17 HEARING OFFICER CELLI: Thank you. Any
18 objection to these exhibits from CURE?

19 MS. GULESSERIAN: CURE has no
20 objections.

21 HEARING OFFICER CELLI: Any objection
22 from staff?

23 MR. BABULA: No objections.

24 HEARING OFFICER CELLI: Very well,
25 exhibits marked for identification 6, 33, 34, 50,

1 51, 60, 61, 72, 96, 99, 113, 128, 163, 170, 176,
2 204, 205, 206, 207, 209, 211, 214, 232, 247, 259,
3 261, 281, 301, 302, 305 and 306 will be admitted
4 into evidence.

5 And 212 was withdrawn by the applicant.

6 Public health.

7 MS. LUCKHARDT: In public health,
8 applicant offers exhibit 14, AFC section 5-10;
9 exhibit 138, the PSA comments on public health;
10 exhibit 139, the PSA comments, attachment public
11 health-1, which is the health risk assessment.

12 Exhibit 177, the project design
13 refinements section 4.2.1.2; exhibit 260, the
14 declaration of Greg Wolf; and exhibit 307, the
15 declaration of Sara Head on public health.

16 HEARING OFFICER CELLI: Any objection to
17 these exhibits, CURE?

18 MS. GULESSERIAN: CURE has no objection.

19 HEARING OFFICER CELLI: Staff, any
20 objection?

21 MR. BABULA: No objection.

22 HEARING OFFICER CELLI: Exhibits marked
23 for identification 14, 138, 139, 177, 260 and 307
24 will be received into evidence.

25 Socioeconomic resources.

1 MS. LUCKHARDT: In the area of
2 socioeconomics, applicant offers exhibit number
3 15, AFC section 511; exhibit number 56, data
4 adequacy supplement on socioeconomics; exhibit
5 number 65, responses to CEC data requests 36
6 through 42; exhibit 81, responses to CEC data
7 requests 81 through 92; and exhibit 234, the
8 declaration of Addie Olazabal on socioeconomics.

9 HEARING OFFICER CELLI: Any objection to
10 these exhibits, CURE?

11 MS. GULESSERIAN: CURE has no objection.

12 HEARING OFFICER CELLI: Staff?

13 MR. BABULA: No objection.

14 HEARING OFFICER CELLI: Thank you. At
15 this time exhibits marked for identification 15,
16 56, 65, 81 and 234 will be received into evidence.

17 Next we have noise and vibration.

18 MS. LUCKHARDT: Applicant offers in the
19 area of noise and vibration exhibit 12, AFC
20 section 5.8; exhibit 117, the preliminary PSA
21 comments section 2-E; exhibit 137, the PSA
22 comments on noise; and exhibit 250, the
23 declaration of Duane McCloud on noise.

24 HEARING OFFICER CELLI: Any objection,
25 CURE?

1 MS. GULESSERIAN: CURE has no objection.

2 HEARING OFFICER CELLI: Staff?

3 MR. BABULA: No objection.

4 HEARING OFFICER CELLI: Exhibits marked
5 for identification 12, 117, 137 and 250 will be
6 received into evidence.

7 Power plant reliability.

8 MS. LUCKHARDT: In the area of power
9 plant reliability those areas are covered within
10 applicant's testimony on facility design and
11 project description.

12 HEARING OFFICER CELLI: Okay. Worker
13 safety and fire protection.

14 MS. LUCKHARDT: In the area of worker
15 safety the applicant offers exhibit number 22, AFC
16 section 5-18; exhibit number 146, the PSA
17 comments; exhibit number 183, the project design
18 refinements section 4.2.7; exhibit number 228, the
19 PSA comments, attachment worker safety-1; exhibit
20 254, the declaration of Duane McCloud on worker
21 safety; exhibit number 269, the declaration of
22 Jared Foster on worker safety; and exhibit number
23 292, the declaration of Mike Arvidson on worker
24 safety.

25 HEARING OFFICER CELLI: CURE, any

1 objection to the exhibits?

2 MS. GULESSERIAN: CURE has no objection.

3 HEARING OFFICER CELLI: Staff, any
4 objection?

5 MR. BABULA: No objection.

6 HEARING OFFICER CELLI: Very well,
7 exhibits marked for identification 22, 146, 183,
8 228, 254, 269 and 292 are received into evidence.
9 Land use.

10 MS. LUCKHARDT: Applicant offers the
11 following exhibits in the area of land use.
12 Exhibit number 11, AFC section 5.7; exhibit number
13 46, AFC appendix K-4; exhibit number 47, AFC
14 appendix K-5; exhibit number 55, the data adequacy
15 supplement on land use.

16 Exhibit number 57, correspondence from
17 Kern County Planning Department, dated 5/1/08;
18 exhibit 111, the boundary survey sheets; exhibit
19 122, the Kern County Resolution approving the land
20 use application; exhibit 136, the PSA comments on
21 land use.

22 Exhibit 213, the application for lot
23 line adjustment; exhibit 223, the response to
24 letter from John Musak.

25 Exhibit 249, the declaration of Duane

1 McCloud on land use; exhibit 275, the declaration
2 of Jerry McLees on land use; exhibit 283, the
3 declaration of Kenneth Stein on land use; exhibit
4 312, the declaration of Scott Busa on land use.

5 HEARING OFFICER CELLI: Thank you. Any
6 objection to these land use exhibits from CURE?

7 MS. GULESSERIAN: CURE has no objection.

8 HEARING OFFICER CELLI: From staff?

9 MR. BABULA: No objection.

10 HEARING OFFICER CELLI: Thank you.
11 Exhibits marked for identification 11, 46, 47, 55,
12 57, 111, 122, 136, 213, 223, 249, 275, 283 and 312
13 are received into evidence at this time.

14 Now, folks, what we just did was we took
15 in a whole lot of evidence without having to hear
16 people testify about it. That was hugely
17 efficient and I appreciate your sitting through
18 that.

19 And you also have to appreciate, just in
20 listening to the titles of some of these exhibits,
21 just how complicated this process is and what
22 needs to be done in order to get a power plant put
23 in, even a solar power plant in California.

24 I have a question, since those were the
25 uncontested topics as of the time of our

1 prehearing conference a week ago. Are there any
2 new uncontested topics that were worked out and
3 solved in the meanwhile? Applicant?

4 MS. LUCKHARDT: Yes. Per your direction
5 we met with staff and resolved outstanding
6 concerns on conditions of certification regarding
7 cultural resources. And we believe that that can
8 be taken by declaration at this time.

9 HEARING OFFICER CELLI: Any objection,
10 CURE?

11 MS. GULESSERIAN: CURE has no objection.

12 HEARING OFFICER CELLI: Staff, any
13 objection to taking cultural by declaration?

14 MR. BABULA: No objection.

15 HEARING OFFICER CELLI: With that then,
16 the applicant, please introduce your exhibits with
17 regard to cultural.

18 MS. LUCKHARDT: The applicant moves
19 exhibit number 8, AFC section 5.4; exhibit number
20 37, AFC appendix G.1; exhibit number 38, AFC
21 appendix G.2; exhibit number 53, the data adequacy
22 supplement on cultural resources; exhibit 64,
23 responses to CEC data requests 26 through 35 with
24 attachments; exhibit 74, supplemental response to
25 data requests 30, 32, 34 and 35 with attachments

1 DR-34 and DR-35.

2 Exhibit 80, responses to CEC data
3 requests 79 through 80; exhibit 85, supplemental
4 response to data requests 30, 32 and 34 with
5 attachment DR-35; exhibit 91, and this is the
6 confidential workshop response to data request 34.

7 Exhibit 104, the geoarcheology trenching
8 plan; exhibit 107, preliminary results from the
9 geoarcheology study, supplemental response to data
10 request 34; exhibit 112, the email response to
11 request for clarification on resource evaluations.

12 Exhibit 115, the preliminary PSA
13 comments, section 2-C; exhibit 123, land form
14 structure and archeological sensitivity in the
15 Beacon Solar Energy Project area. That's a
16 report.

17 Exhibit 132, the PSA comments on
18 cultural resources; exhibit 133, the PSA comments
19 attachment Cul-1; exhibit 134, the PSA comments
20 attachment Cul-2; exhibit 200, the project design
21 refinements attachment 4-C; exhibit 215, response
22 to request regarding Beacon Solar Energy Project
23 subsurface investigations dated 7/22/09.

24 Exhibit 242, the declaration of Craig
25 Young; exhibit 300, the declaration of Rebecca

1 Apple; exhibit 329, the rebuttal testimony of
2 Rebecca Apple; exhibit 330, the rebuttal testimony
3 of Kevin Stein; exhibit 331, the rebuttal
4 testimony of Duane McCloud.

5 Applicant would also like to offer
6 exhibit 339, which is the revised recommended
7 conditions for certification that were agreed upon
8 with Commission Staff, with one correction. And
9 the correction, there's one additional sentence
10 that needs to be added.

11 That sentence needs to be added to
12 cultural-8, condition of certification cultural-8.
13 If you turn to page cultural-21, at the bottom of
14 the first full paragraph. The first full
15 paragraph begins with "Full-time archeological
16 monitoring".

17 At the end of the underline, the
18 underlined sentence reads, "Where scrapers are
19 used for excavation, full-time archeological
20 monitoring shall require one monitor to observe
21 the placement of and inspect dump material for
22 every four monitors observing excavation."

23 The new sentence should read, "For
24 excavation areas where scrapers are not used for
25 excavation, one monitor shall both observe the

1 location of active excavation and inspect the
2 dumped material."

3 Would you like me to read that a second
4 time?

5 HEARING OFFICER CELLI: Please.

6 MS. LUCKHARDT: "For excavation areas
7 where scrapers are not used for excavation, one
8 monitor shall both observe the location of active
9 excavation and inspect the dumped material."

10 HEARING OFFICER CELLI: Thank you.

11 MS. LUCKHARDT: Period.

12 HEARING OFFICER CELLI: Is that all for
13 cultural?

14 MS. LUCKHARDT: That is everything we
15 have for cultural.

16 HEARING OFFICER CELLI: Any objection,
17 CURE?

18 MS. GULESSERIAN: CURE has no objection.

19 HEARING OFFICER CELLI: Staff?

20 MR. BABULA: No objection.

21 HEARING OFFICER CELLI: Very well. You
22 may need to keep the metal away from that thing.
23 So keep your metal pen away from that mic, please.

24 MR. BABULA: Probably plastic.

25 (Laughter.)

1 HEARING OFFICER CELLI: Maybe it's your
2 cuff links or --

3 MR. BABULA: Yeah.

4 HEARING OFFICER CELLI: I don't know.

5 MR. BABULA: It's my Rolex.

6 (Laughter.)

7 MR. BABULA: My plastic one.

8 HEARING OFFICER CELLI: Cultural
9 resources. So this is now an uncontested area.
10 Exhibits marked for identification 8, 37, 38, 53,
11 64, 74, 80, 85, 91, 104, 107, 112, 115, 123, 132,
12 133, 134, 200, 215, 242, 300, 329, 330 and 331
13 will be received into evidence.

14 MS. LUCKHARDT: Will 339 also be
15 received?

16 HEARING OFFICER CELLI: And 339 will be
17 received into evidence.

18 MS. LUCKHARDT: Thank you.

19 HEARING OFFICER CELLI: So, thank you
20 very much. We do appreciate that. Is there
21 anything else that we can take in that's
22 uncontested?

23 MS. LUCKHARDT: The other two areas
24 where we were able to resolve conditions of
25 certification were in water resources and

1 biological resources. Both of which, we
2 understand, are contested and so should probably
3 appropriately be brought in that that time.

4 HEARING OFFICER CELLI: Thank you.
5 CURE, did you have any uncontested evidence to
6 bring in at this time?

7 MS. GULESSERIAN: We do not. At your
8 direction we did attempt to meet with the parties
9 on the issue areas you addressed in the prehearing
10 conference. We were not able to reach resolution
11 on those issues.

12 HEARING OFFICER CELLI: Thank you very
13 much. So, with that, now we've received all the
14 evidence from applicant, staff and CURE on
15 uncontested matters.

16 We are now going to move to disputed
17 topics. The following topics were considered and
18 disputed at the prehearing conference. The
19 Committee will receive evidence in the form of
20 written and live testimony, cross-examination and
21 documentary evidence now, unless the parties are
22 prepared to stipulate to testimony by declaration.

23 The order that we would proceed in
24 today, let me find my note on that -- was biology
25 would go first. There was a request that we

1 insert transmission systems engineering right
2 after biology so that we can make sure the
3 witnesses are here.

4 Then we would go with soil and water.
5 Is that what you --

6 MR. BABULA: I thought we were doing
7 soil and water after bio.

8 HEARING OFFICER CELLI: I'm sorry, say
9 again?

10 MS. LUCKHARDT: We have -- go ahead.

11 MR. BABULA: Okay, well, we were going
12 to do bio first, and then go to soil and water.

13 HEARING OFFICER CELLI: That was the
14 plan. There was a request by applicant to insert
15 visual because there was a problem with your
16 witnesses --

17 MS. LUCKHARDT: Yeah, we have witness
18 availability issues today with visual resources.
19 And we moved that witness from Tuesday at the
20 request of the Hearing Officer to see if we could
21 hear all topics today. But there are constraints
22 because he must fly out from LAX at 6:00 tonight.

23 MR. BABULA: I think Mark Hamblin will
24 be here, but probably more like around 12:00. I
25 think he took the eight, so he'll get in at ten

1 and drive here.

2 HEARING OFFICER CELLI: That's fine.

3 Biology's going to take a little time. And we

4 took up almost an hour just getting the

5 uncontested evidence. And so it seems like that

6 will probably work if there's no objection to

7 taking visual between soil and water and biology.

8 CURE?

9 MS. GULESSERIAN: There's no objection

10 to taking visual. I think I misunderstood that

11 transmission system engineering --

12 HEARING OFFICER CELLI: No, I'm sorry.

13 MS. GULESSERIAN: Okay. Thank you.

14 HEARING OFFICER CELLI: Keep me honest,

15 I might be thinking one thing and saying another.

16 I meant visual.

17 MS. GULESSERIAN: CURE has no objection.

18 HEARING OFFICER CELLI: And if need be,

19 what I would do then is receive the applicant's

20 testimony on visual and then if staff's witness

21 isn't here yet we'll take other evidence and

22 reopen visual for your purposes and proceed that

23 way.

24 MR. BABULA: Okay, actually our

25 biologist just got called to do -- I think she's

1 on the phone with Ivanpah right now.

2 HEARING OFFICER CELLI: Okay.

3 MR. BABULA: So, --

4 MS. LUCKHARDT: Do you want us to start
5 with visual?

6 HEARING OFFICER CELLI: Do you need to
7 have your biologist here right now, or -- is she
8 testifying on the phone right now?

9 MR. BABULA: I think so. What exactly
10 did you --

11 PRESIDING MEMBER DOUGLAS: She just got
12 called for cross-examination for some issue in
13 Ivanpah, so she had to step out.

14 HEARING OFFICER CELLI: Well, staff,
15 what's your feeling? I'm ready to proceed, I'd
16 like to proceed on biology. Do you think you're
17 okay to proceed without your biologist sitting
18 here for the applicant's presentation?

19 MR. BABULA: I think she wanted to hear
20 the applicant's presentation, so -- what about
21 soil and water?

22 HEARING OFFICER CELLI: Does anyone have
23 a problem if we start with soil and water instead?

24 MS. LUCKHARDT: The only problem is then
25 we'll have to do visual before we get into

1 biology, because we'll run out of time.

2 HEARING OFFICER CELLI: Tell you what --

3 MR. BABULA: Do you want to do --

4 HEARING OFFICER CELLI: Visual isn't
5 even contested by CURE, so why don't you put on
6 your visual guy right now.

7 MS. LUCKHARDT: Okay.

8 HEARING OFFICER CELLI: And then --

9 MR. BABULA: When Mark gets here he
10 could do his part.

11 HEARING OFFICER CELLI: Okay. You know
12 what, also, Jared, you have brass buttons.

13 MR. BABULA: And we do have a --

14 (Pause.)

15 HEARING OFFICER CELLI: Okay, so we're
16 going to proceed with visual resources, which is a
17 disputed topic area. Before we proceed with
18 visual, I'm going to ask the applicant if you're
19 going to move in documentary evidence, that we do
20 so. Or actually, let's just take the testimony.

21 MS. LUCKHARDT: Yeah, it'll go with the
22 testimony.

23 HEARING OFFICER CELLI: Okay, very well.

24 MS. LUCKHARDT: Applicant calls Merlyn
25 Paulson to testify on visual resources. We would

1 also like to have Kenny Stein sworn at this time,
2 since Kenny was responsible for the environmental
3 analysis done on this project and may be needed to
4 call to testify at any point today.

5 HEARING OFFICER CELLI: Thank you.

6 Please rise and raise your right hand.

7 Whereupon,

8 MERLYN PAULSON and KENNETH STEIN
9 were called as witnesses herein, and after first
10 having been duly sworn, were examined and
11 testified as follows:

12 HEARING OFFICER CELLI: Please proceed
13 with your first witness.

14 MS. LUCKHARDT: Okay.

15 DIRECT EXAMINATION

16 BY MS. LUCKHARDT:

17 Q Mr. Paulson, are your qualifications
18 included in the record at exhibit 209?

19 MR. PAULSON: Yes.

20 MS. LUCKHARDT: And are you sponsoring
21 today exhibits numbered 19, AFC section 515; 119,
22 the preliminary PSA comments, section 2-G; 144,
23 the PSA comments on visual resources; 164, the
24 project design refinements section 2.1.10 on
25 visual resources; exhibit number 174, the project

1 design refinements section 4.1.7 on visual
2 resources; exhibit number 181, project design
3 refinements section 4.2.5 on visual resources;
4 exhibit number 290, the declaration of Merlyn
5 Paulson and exhibit number 324, which is the
6 rebuttal testimony of Merlyn Paulson, at this
7 time?

8 MR. PAULSON: Yes.

9 MS. LUCKHARDT: In addition, applicant
10 is requesting that the following exhibits be
11 entered by declaration. That would be exhibit
12 233, which is an email from BLM; exhibit 240,
13 which is the declaration of Brian Storm on visual;
14 exhibit 285, which is the declaration by Kenny
15 Stein; and exhibit 323, which is the declaration
16 of Jody Salamacha-Hollier, who took the
17 photographs. It explains how she took the
18 photographs.

19 I don't believe any of those issues are
20 issues of contention at this time where we need
21 the individuals present. So I believe we can
22 enter those by declaration.

23 HEARING OFFICER CELLI: Any objection,
24 CURE?

25 MS. GULESSERIAN: CURE has no

1 objections.

2 HEARING OFFICER CELLI: Staff, any
3 objection?

4 MR. BABULA: No objection.

5 HEARING OFFICER CELLI: Let me make sure
6 I have this right. Exhibits for identification
7 marked 19, 119, 144, 164, 174, 181, 233, 240, 285,
8 290 and 323 are moved in by applicant at this
9 time. And will be received into evidence. Did I
10 get it --

11 MS. LUCKHARDT: In addition to 119, the
12 preliminary PSA comments, and 324, the rebuttal
13 testimony of Merlyn Paulson.

14 HEARING OFFICER CELLI: And any
15 objection, CURE, to 119 and 324?

16 MS. GULESSERIAN: No objection.

17 HEARING OFFICER CELLI: Staff?

18 MR. BABULA: No objection.

19 HEARING OFFICER CELLI: Very well,
20 exhibits marked for identification as 119 and 324
21 are received into evidence.

22 MS. LUCKHARDT: Mr. Paulson, do you have
23 any corrections to your testimony at this time?

24 MR. PAULSON: No.

25 HEARING OFFICER CELLI: Mr. Paulson, I'm

1 going to ask you to slide your mic closer to you
2 so you can speak right into it.

3 MS. LUCKHARDT: And, Mr. Paulson, where
4 your testimony includes opinion, is it your best
5 professional judgment?

6 MR. PAULSON: Yes, it is.

7 MS. LUCKHARDT: And where your testimony
8 includes facts, are they true and correct?

9 MR. PAULSON: Yes.

10 MS. LUCKHARDT: And can you please
11 briefly describe your qualifications in the area
12 of visual resources?

13 MR. PAULSON: Yes.

14 HEARING OFFICER CELLI: Before he does,
15 I'm just wondering if that evidence is already in
16 the declaration somewhere. And I wonder if the
17 parties will be willing to stipulate?

18 MS. LUCKHARDT: It is.

19 HEARING OFFICER CELLI: Visual --

20 MS. LUCKHARDT: It is already in the
21 there.

22 HEARING OFFICER CELLI: Which exhibit?

23 MS. LUCKHARDT: It would be in exhibit
24 290.

25 HEARING OFFICER CELLI: So in light of

1 the fact that Mr. Paulson's qualifications are
2 contained completely in exhibit 290, does CURE
3 have any objection to this witness? Would you be
4 willing to stipulate to his expertise?

5 MS. GULESSERIAN: Yes.

6 HEARING OFFICER CELLI: And, staff,
7 would you be willing to so stipulate?

8 MR. BABULA: Yeah, that's fine. We'll
9 stipulate.

10 HEARING OFFICER CELLI: Thank you. So,
11 with that, I would appreciate it if you just move
12 into the heart of the matter.

13 MS. LUCKHARDT: Okay. Mr. Paulson, can
14 you please provide the Committee with an
15 understanding of the physical setting of the
16 project, the project impacts, and how you reached
17 your conclusion that Beacon will not cause a
18 significant adverse impact?

19 MR. PAULSON: I intend to show -- to
20 demonstrate that the visual environment of KOPs,
21 or key observation points 2 and 6, and you see 6
22 right there and 2 right there.

23 Two is the Jawbone Canyon Visitors
24 Center. Six is a trail in the -- on BLM lands.

25 HEARING OFFICER CELLI: And for the

1 record, you are pointing to a map which has been
2 marked as exhibit what?

3 MS. LUCKHARDT: Exhibit 324.

4 HEARING OFFICER CELLI: Thank you. So,
5 when you say there, if you wouldn't mind saying on
6 exhibit 324 that which is marked, you know,
7 Jawbone Canyon --

8 MR. PAULSON: And say that again now?

9 HEARING OFFICER CELLI: That's fine. I
10 just -- when you state "there" in the record and
11 people are reading the transcript later, it
12 doesn't mean anything because they don't know what
13 "there" is.

14 MR. PAULSON: Okay.

15 HEARING OFFICER CELLI: So, now we know
16 that "there" is exhibit 324, which appears to be
17 what, a map?

18 MR. PAULSON: Exhibit 324 is an aerial
19 photograph with the project and key observation
20 points superimposed.

21 HEARING OFFICER CELLI: Thank you very
22 much.

23 MS. LUCKHARDT: And just for the record,
24 I guess I would clarify that these are PowerPoint
25 slides that are included in 324 that he will be

1 going through. And he can reference slide number
2 as a way to indicate which slide he's on.

3 HEARING OFFICER CELLI: Perfect. Thank
4 you very much. Please proceed.

5 MR. PAULSON: Okay. I intend to
6 demonstrate the visual environment of KOPs 2 and
7 6; and to show the extensive development, large-
8 scale development and geometric patterns on the
9 earth.

10 Next slide, please. This is a slide --
11 the slide is number 3, even though it isn't, for
12 some reason, on this slide now.

13 MR. STEIN: It's up there; in the lower
14 left.

15 MR. PAULSON: Oh, I see, I'm sorry. And
16 this is from Pine Tree Canyon Road, and it is one
17 of the ways to get to KOP-6. This is the transfer
18 station that exists out there now.

19 Next slide, please. This is obviously
20 the road and the Los Angeles Aqueduct Pipeline
21 that crosses all of the roads and trails leading
22 into BLM land.

23 Next slide, please. The pipeline,
24 again, the transmission line. And what's more
25 important is this is Chuckwalla Mountain, the

1 large mountain that is approximately two miles
2 west of KOP-6, which is a ways off the slide here
3 to the right.

4 Next slide, please. The road near the
5 trailhead has this view. First of all of the
6 transfer station in the foreground, the
7 transmission lines. And then the disturbed area
8 that you see is the project area, the project
9 site.

10 The band of green in the background is
11 the Honda Proving Center Test Track. The project
12 site is identifiable from the ground and from the
13 air because of its disturbance pattern and the
14 fact that it's essentially just sand out there.

15 Next slide, please. This is an
16 abandoned homestead foundation. A tree on the
17 left that casts a shadow just off the slide. And
18 it's representative of the character of the
19 trailhead.

20 Next slide, please. This is
21 representative of the very large amount of dumping
22 that's gone on on those BLM roads and trails. And
23 this is a very large tank that someone just sort
24 of stashed here rather than taking it to the
25 landfill.

1 Next slide, please.

2 HEARING OFFICER CELLI: Mr. Paulson, I'm
3 sorry, I may have missed this, but is there a name
4 to this trailhead?

5 MR. PAULSON: No, there isn't. None of
6 the trails are named in that area.

7 HEARING OFFICER CELLI: Thank you.

8 MR. PAULSON: More of the same. This is
9 accompanied -- things like this are accompanied by
10 hundreds and thousands of shell casings along the
11 trails.

12 Next slide, please. Same for this.
13 This is slide 10, and it shows, in this case, a
14 bedspring that someone thought would be easier to
15 put here than in the local dump.

16 Again, the project area. You see that
17 the project area is this rectangle, this geometric
18 pattern. Again, highly visible. It's a landmark
19 in the area from both the ground and the air.

20 Next slide, please. In this case the
21 slide 12, the Honda Proving Center Track and the
22 project area in the foreground. That corner that
23 you see will be a common identifying element in
24 the later slides. And you can see the graded and
25 drained land removed of vegetation in the project

1 area.

2 Next slide, please. There are a
3 significant number of sort of random offroad
4 vehicle trails that are not sanctioned by BLM.
5 And those exist in many places throughout the
6 foothills.

7 Next slide, please. Another example of
8 that on slide 14. Next slide. Thank you. This
9 is that foundation, again, at the trailhead. And
10 it is opportunity for people to park at this
11 particular trailhead. You can see that it isn't
12 just a hiking trail, that it also includes access
13 to those multiple off-highway vehicles.

14 In this case, slide 16 shows -- this
15 slide is -- it's not quite dark enough in the room
16 to see well. The transfer station, a community in
17 the background, and then California -- thank you
18 -- and then California City is in the far
19 background here. The project site is just off to
20 the left. This is part of the experience on the
21 way to the project,

22 Next slide, please. Again, the project
23 area. You can see how different it is than the
24 surrounding desert, in the foreground and on the
25 right-hand side, the Honda Proving Track in the

1 background. And, again, you will see later in
2 KOP-6 that this is where the array goes in this
3 most disturbed area.

4 Next slide, please. This is part of the
5 visual environment between KOP-6 and KOP-2. There
6 are numerous instances of abandoned homesteads and
7 so on.

8 This is the Jawbone Canyon Store
9 obviously from just on the west edge of highway
10 14, very close to KOP-2.

11 Next slide, please. This is, slide 20
12 is the existing environment from KOP-2, the
13 Jawbone Canyon Visitors Center, BLM site. And
14 back here, if you sort of squint your eyes, is
15 that same corner and a ranch that's sort of behind
16 it, disturbed right and left.

17 Next slide, please. This is the AFC
18 photo of the existing environment from KOP-2. And
19 the transfer station is back here. That corner is
20 over on this side. And you can see in the
21 foreground there highway 14, the railroad. And on
22 the left-hand side is the corner of the Honda Test
23 Track.

24 Next slide, please. This is a
25 simulation of the project from the engineering

1 drawings from the project. And, again, it isn't
2 quite dark enough, but you see a little bit of a
3 series of roads right here. And then, of course,
4 the lighter area here. The power block is right
5 there.

6 And this is morning sunlight. The sun
7 has already passed by these arrays, as it would be
8 seen from KOP-2. And all of this is sort of
9 fleeting. It's ephemeral. The colors that you
10 see there are reflected from the sky. And, again,
11 the sun has passed by this area and eventually
12 it's going to pass by this area.

13 And this exact view is sort of a
14 fleeting moment in time because it's a slide,
15 because of the requirements of the AFC, this exact
16 view would maybe last for a half hour at the most.

17 Next slide, please. This is KOP-6. The
18 trail that comes up toward KOP-6 is on the side of
19 this ridge line, on the left-hand side of the
20 ridge line, slide 23. And you can see again the
21 project area, the project site.

22 There are existing ranch buildings here.
23 There are numerous irrigation equipment just kind
24 of abandoned out on the site, it looks. And then
25 the desert around the outside. This is

1 identifiable as a geometric pattern, as well as
2 the Honda test track, both from the ground and
3 from the air. I've flown several times now from
4 Inyo- Kern to Los Angeles, and this is
5 identifiable uniquely.

6 Next slide, please. This is the project
7 superimposed in that rectangular pattern. It's
8 approximately 2300 acres. And by the way, the
9 test track is approximately 2500 acres. So two of
10 these projects would fit inside the test track.

11 Just off to the left of this is Cohen
12 Lake, and it is right now, because of the color of
13 the sky, the same color as the arrays would be.
14 The sun is now at our back and that's why we see
15 the blue. Up until the time the sun is at our
16 back, the arrays would be tan in color, and the
17 same color as the desert around it. So it would
18 blend into this rectangular pattern around it.

19 Again, this is the power block. The
20 color and texture of the project from this
21 distance is very similar to the colors of the
22 disturbed desert around it.

23 In terms of the overall look of all of
24 this, and I'll read this quickly for the record,
25 slide 25: Existing views in the general area

1 already have many geometric features and
2 industrial facilities, such as the highway,
3 railroad, storage buildings, transmission lines,
4 aqueduct and Honda Test Track.

5 Trails to nearby mountains are mostly
6 used by off-highway, offroad vehicles and very few
7 hikers. The FSA's analysis of existing conditions
8 include visual quality, viewer concern,
9 visibility, number of viewers and duration of
10 view. Except for visibility the remaining factors
11 are in the low range from KOP-2 and KOP-6. And
12 the low range of a possible range of low, moderate
13 and high.

14 The FSA's analysis of the project
15 involves visual contrast, dominance, view blockage
16 and visual change. All of these factors are in
17 the low range from KOP-2 and KOP-6 because of the
18 disturbance in the area.

19 In conclusion the Beacon Solar Energy
20 Project should not be considered to have a
21 significant impact to visual resources, based on
22 the criteria presented in the FSA.

23 Thank you.

24 MS. LUCKHARDT: And I have two quick
25 follow-up questions.

1 HEARING OFFICER CELLI: Before you do,
2 can I just ask that the lights go back up.

3 MS. LUCKHARDT: Two quick follow-up
4 questions. Is this project somewhat unique in
5 that the backs of the arrays will be painted sand
6 color?

7 MR. PAULSON: Yes, it is.

8 MS. LUCKHARDT: And did you take the
9 photos that are in the AFC, including the one from
10 the hiking trail?

11 MR. PAULSON: Yes, I did.

12 MS. LUCKHARDT: Thank you. I have no
13 further questions.

14 HEARING OFFICER CELLI: Thank you. This
15 was not a contested area by CURE, but, CURE, do
16 you have any cross-examination of this witness?

17 MS. GULESSERIAN: We do not.

18 HEARING OFFICER CELLI: Thank you.
19 Staff, cross?

20 MR. BABULA: I do have a few questions
21 here.

22 CROSS-EXAMINATION

23 BY MR. BABULA:

24 Q I'm not clear what the relevance is of
25 the garbage in your slides, because the whole

1 issue is from a distance, the contrast of the
2 field.

3 So the slides showing garbage, to me,
4 are a little misleading. Can you just explain
5 what the purpose is of the very close-up shots?
6 Because you can go to any pristine area and find a
7 can and take a picture of it.

8 HEARING OFFICER CELLI: I'm just going
9 to ask the attorneys, watch the compound
10 questions. That was about four questions.

11 MR. BABULA: Right. What's the point of
12 taking pictures of garbage?

13 MR. PAULSON: When one hikes in the
14 area, especially at that slow speed, one is
15 subject to extensive human interactions,
16 interventions with what is otherwise sometimes
17 portrayed as pristine desert. It simply isn't.

18 MR. BABULA: Okay. And my last
19 question. In your testimony you stated, well, the
20 project, itself, would create a substantial visual
21 contrast for a portion of the day. And I take it
22 that was the half-hour slide? Isn't that the
23 problem, though? I mean you have a substantial
24 visual contrast for even if it's a short period.
25 Someone could be out there and it looks completely

1 different.

2 MR. PAULSON: Yes, those slides
3 represent the worst case --

4 MR. BABULA: Okay.

5 MR. PAULSON: -- regardless of how
6 little time.

7 MR. BABULA: Okay. So you stated it is
8 a substantial visual contrast. Isn't that a
9 little contradictory to then conclude that there
10 is no impact?

11 MR. PAULSON: There are many projects
12 over the last 37 years of work that have a
13 substantial visual contrast, but aren't
14 necessarily significant. There's a difference
15 between contrast and significant.

16 Every indicator doesn't automatically
17 determine significance if it's in the moderate to
18 high category.

19 MR. BABULA: Okay.

20 MR. PAULSON: So there's a difference
21 between significant and high contrast.

22 MR. BABULA: I don't have any further
23 questions.

24 HEARING OFFICER CELLI: Okay. Chairman
25 Douglas, did you have any questions? I have a

1 question. I just wanted to make sure that I
2 understood.

3 Presumably all that trash and debris is
4 a temporary condition, it could be cleaned up if
5 anybody ever decided to do so.

6 Are you suggesting that it is that
7 condition that reduces this impact to less than
8 significant?

9 MR. PAULSON: Not just that. No, no.
10 It's on a scale of one-to-ten, I'll just throw out
11 a number, it might be a two or a three. It's part
12 of the environment.

13 What does reduce the impact to less than
14 significant are the large-scale, intensive
15 geometric patterns that exist out there. And
16 they're going to exist with or without the
17 project. So then the project kind of blends in
18 with those.

19 HEARING OFFICER CELLI: Thank you. I
20 just have another question if it's acceptable to
21 the parties. I just wanted to -- it's been awhile
22 since I read the visual section. And I do recall
23 reading that it was from these two KOPs, what was
24 it 4 and 6 --

25 MR. BABULA: Two and 6.

1 HEARING OFFICER CELLI: -- 2 and 6, but
2 for 2 and 6 there would be no visual impacts. But
3 it was from these KOPs that staff determined that
4 there were unmitigable impacts. Those are those
5 grand views that you showed us up there.

6 What is it in the staff's evidence that
7 you differ with?

8 MR. PAULSON: Simply that a moderate-to-
9 high contrast automatically equates to significant
10 impact.

11 HEARING OFFICER CELLI: You feel that it
12 does not?

13 MR. PAULSON: In this case I feel that
14 it does not. And if it was out in pristine desert
15 I wouldn't feel that way. But we have these
16 geometric patterns there that predate the project.
17 And they're going to be there with or without the
18 project. And that, in my opinion, is cause for
19 saying it's not significant.

20 HEARING OFFICER CELLI: Thank you. Any
21 rehabilitation?

22 MS. LUCKHARDT: No.

23 HEARING OFFICER CELLI: Any recross,
24 CURE?

25 MS. GULESSERIAN: No.

1 HEARING OFFICER CELLI: Recross, staff?

2 MR. BABULA: No.

3 HEARING OFFICER CELLI: Since I asked
4 questions it gives you the opportunity to clean up
5 any mess I made. Okay.

6 Applicant, anything further?

7 MS. LUCKHARDT: We have nothing further.

8 HEARING OFFICER CELLI: I believe at
9 this time we've received all of your evidence with
10 regard to visual?

11 MS. LUCKHARDT: Can we double-check that
12 exhibit 105 was entered into the record. I
13 thought it was; I'd just like to confirm that.

14 HEARING OFFICER CELLI: What has now
15 been received is 19, 105, 119, 144, 164, 174, 181,
16 233, 240, 285, 290, 323 and 324.

17 MS. LUCKHARDT: Thank you.

18 HEARING OFFICER CELLI: Anything further
19 of this witness?

20 MS. LUCKHARDT: No.

21 HEARING OFFICER CELLI: Thank you, Mr.
22 Paulson, for your testimony.

23 MR. PAULSON: Thank you.

24 HEARING OFFICER CELLI: We are going to
25 leave visual open then until we hear from Mr.

1 Hamblin, Mark Hamblin.

2 MR. BABULA: I don't see him now. I'm
3 also seeing if Susan's here.

4 HEARING OFFICER CELLI: Did you have
5 another witness on visual?

6 MR. BABULA: No. I meant Susan Sanders
7 for bio.

8 HEARING OFFICER CELLI: Oh.

9 MR. BABULA: So maybe we can move to
10 soil and water.

11 HEARING OFFICER CELLI: Well, I really
12 wanted to see if we could get to bio. It's 11:20.
13 Made good progress in that we've taken care of
14 cultural and part of visual.

15 How much time do you think Mr. Hamblin
16 is going to be?

17 MR. BABULA: Oh, five, ten minutes. We
18 don't have a slide presentation.

19 HEARING OFFICER CELLI: Chairman
20 Douglas, do you want to just proceed with -- soil
21 and water, then. Let's move on to soil and water.

22 Ladies and gentlemen, just so you're
23 aware, the applicant has the burden of proof, so
24 the applicant goes first. The applicant being
25 Nextera. This is their project, so it's incumbent

1 upon them to explain to us what their information
2 is, what their design is. So they go first.

3 Soil and water.

4 (Pause.)

5 HEARING OFFICER CELLI: Are we doing
6 anything special here with a panel or anything
7 like that?

8 MS. LUCKHARDT: We have -- I believe
9 that we can enter Mr. Busa's testimony by
10 declaration, so we begin with Mike Flack. And
11 then if there are engineering questions, since Mr.
12 McCloud is still in the air, Jared Foster is
13 available if we need to do engineering questions
14 on water at this time.

15 HEARING OFFICER CELLI: Well, just for
16 the sake of clarity, I have soil and water split
17 into three sections and the amended applicant's
18 exhibit list.

19 I've got hydrology, I've got soils and
20 I've got water. Are all of these in dispute, soil
21 and water and hydrology?

22 MR. BABULA: I'm actually not clear why
23 you're having the applicant go first. I believe
24 CURE has the burden, because they have issues with
25 the use of recycled water, or not using recycled

1 water for the construction portion of this. And
2 so they want additional information.

3 And so I think under 1748 it's their
4 burden.

5 HEARING OFFICER CELLI: It would be if
6 we'd established that there's no controversy
7 between staff and applicant with regard to soil.

8 MR. BABULA: There isn't any.

9 MS. LUCKHARDT: There is no conflict --

10 HEARING OFFICER CELLI: Soil, water or
11 hydrology?

12 MR. BABULA: No.

13 MS. LUCKHARDT: No.

14 MR. BABULA: We've resolved all issues
15 with the applicant on soil and water.

16 HEARING OFFICER CELLI: Very good. Ms.
17 Gulesserian, do you have any objection to -- I'm
18 interested in seeing what exhibits I can receive
19 into evidence now that are not controverted of the
20 soils, of the hydrology and water evidence that
21 applicant's putting in at this time.

22 MS. LUCKHARDT: I would assume that we
23 could enter in the, at least the exhibits on
24 hydrology and hydraulics. And we may have a
25 separate soil section, as well.

1 HEARING OFFICER CELLI: Does that ring
2 true for you, Ms. Gulesserian.

3 MS. GULESSERIAN: Yes. CURE has no
4 objection to entering those documents into the
5 record.

6 HEARING OFFICER CELLI: When you say
7 those documents, you're talking about hydrology --

8 MS. GULESSERIAN: Soil and water and
9 hydrology.

10 HEARING OFFICER CELLI: Okay, so then
11 what I'm going to do at this time is first go to
12 hydrology and hydraulics. CURE, there's no
13 objection to the receipt of exhibits 63, 75, 82,
14 150, 152, 156, 194, 210, 217, 218, 237, 257, 273,
15 318 and 321.

16 Is there any objection from staff?

17 MR. BABULA: No objection.

18 HEARING OFFICER CELLI: So, with that is
19 there a motion by applicant?

20 MS. LUCKHARDT: Applicant moves exhibit
21 63, the responses to CEC data requests 17 and 43
22 through 44; exhibit 75, the supplemental responses
23 to CEC data requests 44 and 45 with attachments
24 DR-44 and DR-45; exhibit 82, responses to CEC data
25 requests 93 through 95.

1 Exhibit 150, materials from the Clumar
2 meeting; exhibit 152, the rerouted wash
3 electronics support files; exhibit 156, project
4 design refinements section 2.1.1; exhibit 194,
5 project design refinements attachment 1-A.

6 Exhibit 210, email from Jen Guigliano
7 with the electronic support file; exhibit 217, the
8 response to the rerouted wash information request;
9 exhibit 218, the email from Jen Guigliano on the
10 flow 2D models.

11 Exhibit 237, the declaration of Bob
12 Anders on hydrology and hydraulics; exhibit 257,
13 the declaration of Gerard DiDeo (phonetic) on
14 hydrology and hydraulics; exhibit 273, the
15 declaration of Jennifer Guigliano on hydrology and
16 hydraulics; exhibit 318, the declaration of Sirkan
17 Momatoglu (phonetic)- - hopefully I haven't killed
18 that one -- on hydrology and hydraulics. And
19 exhibit 321, the 60 percent hydrology and
20 hydraulic analysis of the rerouted wash.

21 HEARING OFFICER CELLI: Thank you. And
22 in the absence of objections from any parties,
23 exhibits marked for identification 63, 75, 82,
24 150, 152, 156, 194, 210, 217, 218, 237, 257, 273,
25 318 and 321 are received into evidence.

1 MS. LUCKHARDT: In the area of soils the
2 applicant moves exhibit number 16, AFC section 5-
3 12; exhibit 49, AFC appendix L; exhibit 66,
4 responses to CEC data requests 45 through 49 and
5 attachment DR-47; exhibit 238, declaration of Bob
6 Anders on soils; exhibit 251, declaration of Duane
7 McCloud on soils; and exhibit 294, the declaration
8 of Mike Flack on soils.

9 HEARING OFFICER CELLI: Any objection to
10 those exhibits from CURE?

11 MS. GULESSERIAN: No objection.

12 HEARING OFFICER CELLI: Any objection
13 from staff?

14 MR. BABULA: No objection.

15 HEARING OFFICER CELLI: Thank you. With
16 that exhibits marked for identification 16, 49,
17 66, 238, 251 and 294 will be received into
18 evidence.

19 And next we go on to water, page 11.

20 MS. LUCKHARDT: Okay, applicant -- would
21 you like me to move our exhibits at this time on
22 water?

23 HEARING OFFICER CELLI: Please.

24 MS. LUCKHARDT: Exhibit 21, AFC section
25 5-17; exhibit 41, AFC appendix J; exhibit 42, AFC

1 appendix J-3-D; exhibit 69, responses to CEC data
2 requests 58 through 70; exhibit 70, responses to
3 CEC data requests attachment DR-63; exhibit 83,
4 responses to CEC data requests 96 through 127;
5 exhibit -- with the accompanying figures and
6 tables.

7 Exhibit 84, response to data request 113
8 and attachment DR-113, the mod flow files; exhibit
9 86, supplemental responses to CEC data requests
10 101 through 103, 106 through 109, 112, 114 through
11 115, 117 through 123 with the attached tables and
12 figures.

13 Exhibit 94, supplemental data response,
14 workshop responses to CEC data requests 96, 101,
15 112, 114, 118 and 121 with attachments; exhibit
16 102, an email responding to CEC request regarding
17 high TDS water dated 1/16/09.

18 Exhibit 106, a summary of conference
19 call with Lahontan; exhibit 108, a response to the
20 Regional Water Quality Control Board comments on
21 the draft report of waste discharge application.

22 Exhibit 109, an email dated 2/23/09 with
23 a response to Eric Solorio regarding the sources
24 of groundwater data with an updated J-4 database.
25 Exhibit 120, the preliminary PSA comments, section

1 3A; exhibit 140, the PSA comments on soil and
2 water.

3 Exhibit 141, the PSA comments attachment
4 soil and water-1; exhibit 142, the PSA comments
5 with attachment soil and water-2; exhibit 188, the
6 project design refinements, figure 1, attachment
7 202 project design refinements, attachment 5.

8 Exhibit 203, project design refinements
9 attachment 6; exhibit 216, response to request for
10 predictive sensitivity groundwater analysis;
11 exhibit 225, an email dated 9/11/09 regarding
12 updated construction water impacts.

13 Exhibit 226, the LADWP's draft initial
14 study proposed negative declaration on the SAMDA
15 water exploration Fremont Valley Ranch water
16 management project; exhibit 227, the Stetson
17 groundwater study; exhibit 231, the DWR well data.

18 Exhibit 243, the declaration of Dan
19 Sampson on water; exhibit 274, the declaration of
20 Jen Guigliano on water; exhibit 295, the
21 declaration of Michael Flack, this is exhibit 1 on
22 water -- or declaration 1 for Mike Flack. Exhibit
23 296 is the second declaration from Mike Flack.

24 Exhibit 315, the declaration of Scott
25 Stern on water; exhibit 335, rebuttal testimony of

1 Michael Flack on water resources; exhibit 336, the
2 rebuttal testimony of Scott Busa on water
3 resources.

4 And exhibit 337 is the revised and
5 recommended condition of certification soil and
6 water-1, and appendix I that were agreed to
7 between the parties last week. Copies were sent
8 out via email. And I believe we also have copies
9 here today if anyone does not have them.

10 HEARING OFFICER CELLI: Any objection to
11 those exhibits, CURE?

12 MS. GULESSERIAN: No objection.

13 HEARING OFFICER CELLI: Any objection,
14 staff?

15 MR. BABULA: No objection.

16 HEARING OFFICER CELLI: Thanks you.

17 Exhibits marked for identification as 21, 41, 42
18 to 69, 70, 83, 84, 86, 94, 102, 106, 108, 109,
19 120, 140, 141, 142, 188, 202, 203, 216, 225, 226,
20 227, 231, 243, 274, 295, 296, 315, 335, 336 and
21 337 are received into evidence at this time.

22 Applicant, call your first witness.

23 MS. LUCKHARDT: The only witness we
24 believe we need to present today in response to
25 the concerns expressed by CURE is Mr. Flack.

1 HEARING OFFICER CELLI: Oh, actually,
2 CURE -- never mind. We have received your
3 evidence. CURE, the burden is on you, at this
4 time, because you're challenging, so if you
5 wouldn't mind calling your first witness and
6 having him be sworn.

7 MS. GULESSERIAN: Sure. In the interest
8 of moving things along I could. I don't think
9 that there is a dispute regarding our exhibits
10 being entered into the record. Could we do that
11 ahead of time?

12 HEARING OFFICER CELLI: Which numbers
13 are those?

14 MS. GULESSERIAN: That is --

15 HEARING OFFICER CELLI: I have 600 --

16 MS. GULESSERIAN: CURE would move to
17 enter into the record 616, testimony of --

18 HEARING OFFICER CELLI: Let's go back.

19 MS. GULESSERIAN: Sure.

20 HEARING OFFICER CELLI: Soil, 612, is it
21 appropriate to enter that at this time? Because
22 we entered applicant's soil already.

23 MS. GULESSERIAN: Right, we could do
24 that now and --

25 HEARING OFFICER CELLI: So, let's take

1 it from soil, and then take your soil and water.
2 Before we do, let me just ask this. Applicant,
3 you reviewed all of CURE's exhibits, their
4 seconded amended exhibit list. Do you have any
5 objections to any particular exhibits coming in at
6 all?

7 MS. LUCKHARDT: We have no objections to
8 CURE's second amended exhibit list. We do have
9 objections to CURE's third amended exhibit list.
10 We have objections to exhibit number 638 and 639,
11 I believe, are the two that deal with soil and
12 water.

13 HEARING OFFICER CELLI: I have only
14 CURE's second amended list. And before we move
15 into any new exhibits, are there any objections
16 from the staff as to any of the exhibits listed by
17 CURE in their second amended exhibit list?

18 MR. BABULA: The second amended one, --

19 HEARING OFFICER CELLI: And that would
20 include 600 through 631.

21 MR. BABULA: Okay. If it just goes to
22 631, that was what they had already presented at
23 the --

24 HEARING OFFICER CELLI: Prehearing
25 conference.

1 MR. BABULA: Yeah, that's fine. We
2 don't object to those.

3 HEARING OFFICER CELLI: With that, then,
4 I think in the interest of time what I might just
5 do is to have CURE move those exhibits in, and
6 then we'll talk about the subsequent ones, which I
7 don't have.

8 MS. LUCKHARDT: Are you moving in
9 hazardous materials and biology at this time, as
10 well, or simply water?

11 HEARING OFFICER CELLI: I'm thinking we
12 might as well enter all of the exhibits now, and
13 this way we're not wondering later what we
14 admitted, this or that exhibit.

15 I mean if the parties don't want us to
16 do that, then I can piecemeal it.

17 MS. LUCKHARDT: That's fine. You're
18 going through to 631?

19 HEARING OFFICER CELLI: Yes.

20 MS. LUCKHARDT: We have no objection
21 through 631.

22 MS. GULESSERIAN: CURE's second amended
23 exhibit list went through 637.

24 HEARING OFFICER CELLI: I'm on page 5.
25 Now this is -- oh, I see, 636 and 637 on page 4.

1 MS. LUCKHARDT: We object to the
2 admission of 637, the confidential appendix C.

3 MS. GULESSERIAN: And we haven't moved
4 to enter that into the record at this time.

5 HEARING OFFICER CELLI: So, is there,
6 from applicant, any objection to receipt of
7 evidence through 636?

8 MS. LUCKHARDT: No.

9 HEARING OFFICER CELLI: Is there any
10 objection from staff?

11 MR. BABULA: No.

12 HEARING OFFICER CELLI: Okay, what I
13 think we should do in the interest of time, then,
14 is if you would please, as the applicant just did,
15 identify; give us the exhibit number, what it is.
16 Let's just get them all in and then you got all
17 your documents.

18 MS. GULESSERIAN: Okay. I'll note that
19 we have additional exhibits, but we can start with
20 these ones and then go on --

21 HEARING OFFICER CELLI: So we're taking
22 it through 636, please.

23 MS. GULESSERIAN: Thank you. CURE moves
24 to enter into the record exhibit 60, testimony of
25 Scott Cashen on biological resources; 601,

1 declaration of Scott Cashen; 602, exhibit 1,
2 r, sum, of Scott Cashen; 603, exhibit 2, California
3 Department of Fish and Game Mojave Ground Squirrel
4 Guidelines.

5 Exhibit 604, exhibit 3, Gustafson, Jr.,
6 State of California, Department of Fish and Game;
7 exhibit 605, exhibit 4, conference call agenda for
8 May 21, 2008 BSEPCEC proceeding; exhibit 606,
9 exhibit 5, AFC bio tech report, figure 11.

10 Exhibit 607, exhibit 6, the California
11 Burrowing Owl Consortium, burrowing owl survey
12 protocol and mitigation guidelines; exhibit 608,
13 exhibit 7, State of California, Department of Fish
14 and Game, Staff report on burrowing owl
15 mitigation.

16 Exhibit 609, exhibit 8, AFC figure BR-
17 78-1; exhibit 610, exhibit 9, applicant's response
18 to select CURE's comments at CEC's request;
19 exhibit 611, exhibit 10, memorandum from
20 California Department of Fish and Game to
21 California Energy Commission, subject Beacon Solar
22 Energy Project, application for certification.

23 Exhibit 612, testimony of Matt Hagemann
24 on soil resources and waste management; exhibit
25 613, declaration of Matt Hagemann; exhibit 614,

1 attachment 1, r,sum, of Matt Hagemann; exhibit
2 615, attachment 2, spill reports sites 3 through
3 7.

4 Exhibit 616, testimony of David Marcus
5 on transmission engineering and water resources
6 and alternatives. Exhibit 617, declaration of
7 David Marcus; exhibit 618, exhibit 1, r,sum, of
8 David Marcus; exhibit 619, exhibit 2, LADWP Barren
9 Ridge Renewable Transmission Project.

10 Exhibit 620, exhibit 3, projection
11 engineering statement of qualifications; exhibit
12 621, exhibit 4, NRG SCE filing, Parsons, FPPE,
13 Beacon Solar Energy Project dry cooling
14 evaluation; exhibit 624, exhibit 7, CPUC 33
15 percent renewable portfolio standard
16 implementation analysis, preliminary results.

17 Exhibit 625, rebuttal testimony of Matt
18 Hagemann on hazardous materials and waste
19 management; exhibit 626, declaration of Matt
20 Hagemann; exhibit 627, attachment 1, hazardous
21 materials business plan February 23, 2009, LUZ
22 Solar Partners 3 through 7.

23 Exhibit 628, attachment 2, material
24 safety data sheet for ThermalVP-1, May 16, 2009;
25 exhibit 629, attachment 3, letter from FPL Energy

1 to RWQCB re: SEGS, 3 HTF spill October 21, 2005.

2 Exhibit 630, attachment 4, notice of
3 violation issued by San Bernardino County Fire
4 Department to FPL Energy; exhibit 631, attachment
5 5, recycled materials reports FPL Energy to San
6 Bernardino County Fire Department 2004 to 2005 and
7 2006 to 2007.

8 Exhibit 632, rebuttal testimony of
9 Michael A. Bias on biological resources; exhibit
10 633, declaration of Michael A. Bias; exhibit 634,
11 adopted declaration; exhibit 635, exhibit 1,
12 r, sum, of Michael A. Bias; exhibit 636, BESP FSA
13 soil and water resources and alternatives.

14 HEARING OFFICER CELLI: So at this time,
15 there being no objection from any party,
16 intervenor CURE's exhibits 600 through 636 are
17 admitted.

18 Now, you intend to withdraw 637 today
19 and not admit it?

20 MS. GULESSERIAN: I'm not prepared to
21 withdraw it at this time.

22 HEARING OFFICER CELLI: Maybe we'll hold
23 off on that. Are there any other exhibits beyond
24 637 that I'm not aware of at this time?

25 MS. GULESSERIAN: Yes, there are. These

1 exhibits were provided to the parties last week
2 and served on the docket list, service list. I'm
3 trying to -- shall I go through all of them, or
4 maybe save the biological resources for those --

5 HEARING OFFICER CELLI: How many
6 exhibits are we talking about?

7 MS. GULESSERIAN: We're talking about
8 exhibit 638, Office of Governor for the State of
9 California, 2009 comprehensive water package,
10 special session policy bills and bond, and summary
11 and a declaration.

12 Exhibit 639 --

13 MR. BABULA: It's like 20.

14 HEARING OFFICER CELLI: Pardon?

15 MR. BABULA: Around 20 extra exhibits.

16 MS. GULESSERIAN: Yes.

17 MS. LUCKHARDT: When printed out it
18 looks like this.

19 HEARING OFFICER CELLI: And this is
20 apparently after the prehearing conference?

21 MS. GULESSERIAN: That's correct. These
22 were documents relied upon; they're cited in
23 testimony that's already been submitted and there
24 shouldn't be any surprises.

25 These 638 and 639, which have to do with

1 water resources, are exhibits that you could take
2 judicial notice of. They're State of California
3 website pages summarizing water issues in the
4 State of California, which is relevant to the
5 Commission's decision on water conservation
6 consistency with LORS.

7 MS. LUCKHARDT: We would object to
8 those. If she would like to cite the actual law,
9 she can do that. We don't need a summary from the
10 Governor's website that is a summary of the
11 adopted water settlement on the Bay Delta.

12 So, we --

13 HEARING OFFICER CELLI: It does --
14 anything on staff -- before I get to that I just
15 want to say it does seem needlessly cumulative,
16 and I'll tell you why.

17 We have the law. If there's a
18 particular slant, I guess, on that law from the
19 Governor's Office, I'm not so sure that that is
20 anything that we could take judicial count --
21 official notice of, per se, other than its
22 existence.

23 MS. GULESSERIAN: We would like to have
24 these into the record. They are the Governor's
25 intent on why he has signed a bill that is

1 authorizing a bond to address water issues in the
2 State of California.

3 We can certainly cite to the
4 legislation, but the reasons for signing that
5 legislation are set forth just on the State of
6 California's website, the Governor's website.

7 HEARING OFFICER CELLI: You know, part
8 of the reason we have a prehearing conference, in
9 fact the only reason we have a prehearing
10 conference is so that we don't have this
11 circumstance pop up where new exhibits come after
12 the prehearing conference that parties are
13 objecting to.

14 I mean if there were going to be an
15 objection to these exhibits, we could have haggled
16 it out at the prehearing conference. That's the
17 whole reason we have a prehearing conference. To
18 find out what you want to bring in; find out what
19 their objections are, and move on.

20 But this comes a little late in the
21 game.

22 MS. GULESSERIAN: These exhibits were
23 served last week.

24 HEARING OFFICER CELLI: But after the
25 prehearing conference --

1 MS. LUCKHARDT: I would like to clarify.

2 We received an email with an exhibit list on
3 Thursday sometime between 4:00 and 5:00.

4 HEARING OFFICER CELLI: Hold that
5 thought. Marlee, this is clicking, the tape
6 recorder sitting right here is clicking.

7 Folks, just so you know, everything
8 that's being said is being recorded. And we will
9 have a transcript out. Just want to make sure
10 that we don't have holes in the transcript, so.

11 THE REPORTER: Normal backup, thank you.

12 HEARING OFFICER CELLI: Before we go on
13 -- so, Ms. Luckhardt, go ahead.

14 MS. LUCKHARDT: We received an exhibit
15 list, an email with an exhibit list, on Thursday,
16 sometime between 4:00 and 5:00, listing these
17 exhibits. We did not actually receive the
18 exhibits. These were hard copies sent to us until
19 Friday.

20 And when we received them we then had to
21 go through and proceed to scan them to get them to
22 our witnesses in time to allow anyone to even have
23 an opportunity to see what they are, let alone
24 digest what's said inside them and what they
25 relate to.

1 So these are late, and extremely late,
2 given that we've had not even one complete working
3 day before today to review these exhibits.

4 And it wasn't just one small thing. I
5 mean I'm looking at three inches of paper. And,
6 you know, especially when you're going to bring up
7 things like the Governor's website, as opposed to
8 just citing directly to the law. There are
9 political overtones that are a part of any
10 political office.

11 And we object, and would object to
12 taking official notice of those documents as being
13 the truth of the matter asserted.

14 So, other than the fact that they exist,
15 and that's what's on the Governor's website, we
16 would object to what is said inside those.
17 Because they are essentially an interpretation of
18 the law that was passed.

19 MS. GULESSERIAN: These exhibits were
20 served last week, and when the -- when it was sent
21 out by email both of these two documents were
22 identified with a hyperlink, as was, you know,
23 staff's exhibits that they identified with
24 hyperlinks, yet didn't provide in hard copy.

25 So, --

1 HEARING OFFICER CELLI: What date did
2 that email go out? Or what day of last week?
3 Because we had our prehearing conference on Monday
4 of last week, correct?

5 MS. GULESSERIAN: Yes. Correct.

6 MS. LUCKHARDT: Yes.

7 HEARING OFFICER CELLI: So what day did
8 the email go out?

9 MS. GULESSERIAN: I apologize, I'm going
10 to try and --

11 HEARING OFFICER CELLI: Last week was,
12 the 15th was Monday.

13 MS. GULESSERIAN: One moment, please.

14 HEARING OFFICER CELLI: And do you have
15 a copy of that email, Ms. Luckhardt? Do you have
16 the date and time on that email?

17 MS. LUCKHARDT: I would have to look it
18 up.

19 HEARING OFFICER CELLI: That's okay, Ms.
20 Gulesserian --

21 MS. GULESSERIAN: March 18th.

22 HEARING OFFICER CELLI: Well, March 18th
23 the email went out with, do I have it right, 20
24 additional exhibits? Where you left off was 637,
25 including that confidential --

1 MS. GULESSERIAN: Nineteen.

2 HEARING OFFICER CELLI: So, 19 exhibits
3 on the 18th. And when --

4 MS. GULESSERIAN: And thereafter we sent
5 two more, so there's 21, in a separate document.
6 And a separate email to the service list.

7 HEARING OFFICER CELLI: And were you
8 aware of the existence of these exhibits on the
9 15th at our prehearing conference?

10 MS. GULESSERIAN: I was not aware of
11 them.

12 HEARING OFFICER CELLI: And how was
13 their existence brought to your attention
14 subsequent?

15 MS. GULESSERIAN: My -- in preparing
16 testimony my witnesses identified documents that
17 they relied upon in preparing their testimony that
18 would be useful for the Commissioners to be able
19 to verify the truth of the matters stated in their
20 testimony.

21 HEARING OFFICER CELLI: I'm going to
22 first hear from staff. And then I'm going to make
23 a ruling and move on. Staff.

24 MR. BABULA: Yeah, I actually never
25 looked at -- I didn't see these documents until I

1 got here today. I received the emails on the 18th
2 at 4:44. And then it just --

3 HEARING OFFICER CELLI: What day of the
4 week was the 18th?

5 MR. BABULA: Thursday. And then -- but
6 there was no documents attached. And then Friday
7 was problematic because of the furlough. So I was
8 working from home, but I never received any hard
9 copies of anything. And my staff hasn't seen
10 these exhibits whatsoever.

11 And I'd have to agree with the applicant
12 on their objection, that the Governor's website,
13 it exists but it may or may not, I don't know what
14 the content and I haven't looked at that
15 particular document, so I'm not even sure what
16 they're trying to pull from that.

17 HEARING OFFICER CELLI: So, although you
18 agree with the applicant's objection, does staff
19 object to the --

20 MR. BABULA: Yeah, I would object to the
21 admission of all those documents. They're late
22 and we haven't had a chance to review them. They
23 don't even seem particularly relevant.

24 HEARING OFFICER CELLI: What I would say
25 is this, Ms. Gulesserian. As we are aware, your

1 experts may rely on hearsay, and they may testify
2 as to hearsay. But we don't necessarily need the
3 hearsay documents supporting their testimony to
4 come in.

5 I find that there is a -- the parties
6 are prejudiced by this late offering of 19
7 exhibits. I will not admit, will not receive
8 exhibits -- those are exhibits 638 through what is
9 the last number?

10 MS. GULESSERIAN: Well, 638 and 639 are
11 the ones that we just discussed counsels'
12 objections to. And those are the two State of
13 California websites.

14 HEARING OFFICER CELLI: I'll tell you,
15 the basis of the objection to be clear for the
16 record, is that this is late, after filed. I'm
17 sure you didn't mean to ambush anyone. I'm sure
18 there were efforts to have a complete record and
19 to support your evidence, that you wanted to put
20 these last-minute things in.

21 But there's a point at which we have to
22 say no. And that point is the prehearing
23 conference. When the parties come into the
24 prehearing conference, that's the state of the
25 evidence. And unless there was some compelling

1 evidence later-found information based upon
2 somebody perhaps hiding or playing hide-the-ball,
3 or something like that, that's different.

4 But this is an awful lot that I'm
5 looking at. We will take official notice that
6 that's a good three inches of paper. And that's
7 an awful lot of evidence to hit the other parties
8 with after the prehearing conference.

9 And so with that, I would not admit
10 exhibits 638 -- what was the last number?

11 MS. GULESSERIAN: May I get some
12 clarification before you make your ruling?

13 HEARING OFFICER CELLI: Please.

14 MS. GULESSERIAN: I'd like to hear the
15 objection, I mean if they're all being based on it
16 late is my understanding, but the record is open
17 until the close of the evidentiary period. And
18 these documents were provided.

19 I also understand that people can submit
20 documentary evidence even today before the
21 evidentiary record closes.

22 HEARING OFFICER CELLI: Certainly, but
23 that's in the case of, let's say, rebuttal
24 testimony or really is in cross-examination.
25 There's no limitation on what documents the

1 parties want to use to cross-examine.

2 But as the proponent of evidence of
3 direct testimony, which is what you're putting in,
4 that's final. That's known and that came in at
5 the prehearing conference.

6 So, I'm sorry if there were additional
7 information that you'd like to get in, I think
8 that we have an adequate record, as it is. I've
9 read the testimony and the rebuttal testimony.

10 So, --

11 MS. GULESSERIAN: There are a few
12 exhibits that we would be -- we could discuss in
13 cross-examination of other witnesses. We're
14 talking about them in a lump sum, but some of them
15 are related to other issues that we're not talking
16 about right now.

17 For example, transmission system
18 engineering. We could, during cross, enter those
19 exhibits into the record if that witness --

20 HEARING OFFICER CELLI: Certainly, if
21 that witness is aware of that document, you cross
22 him on the document, certainly you can make that
23 motion then.

24 But at this time, the Committee is
25 ruling that exhibits -- so the additional new

1 exhibits after the prehearing conference would
2 have been marked for identification as 638 through
3 what number?

4 MS. GULESSERIAN: Through 658.

5 HEARING OFFICER CELLI: -- 658. Very
6 well. Exhibits 638 and 658, the objection is
7 sustained. They're late-filed and therefore the
8 Committee finds that those exhibits will not be
9 included into the record, without prejudice to
10 their use, perhaps, on cross-examination for
11 impeachment, if necessary. And only if found
12 relevant.

13 So, with that, let's move on.

14 And, please, let's have your first
15 witness -- has not been sworn yet, I don't
16 believe. Or has he?

17 Whereupon,

18 DAVID MARCUS
19 was called as a witness herein, and after first
20 having been duly sworn, was examined and testified
21 as follows:

22 HEARING OFFICER CELLI: State your name
23 and spell it for the record.

24 MR. MARCUS: My name is David Marcus,
25 M-a-r-c-u-s.

1 HEARING OFFICER CELLI: Thank you, Mr.
2 Marcus. You may proceed, Ms. Gulesserian.

3 DIRECT EXAMINATION

4 BY MS. GULESSERIAN:

5 Q Mr. Marcus, whose testimony are you
6 sponsoring today?

7 A I'm sponsoring my testimony on behalf of
8 CURE on transmission engineering and water
9 resources and alternatives of the Beacon Solar
10 Project, dated November 12, 2009.

11 MS. GULESSERIAN: And let the record
12 note that those are marked as exhibits 616 through
13 624.

14 HEARING OFFICER CELLI: The record will
15 so reflect.

16 BY MS. GULESSERIAN:

17 Q Are there any changes to your sworn
18 testimony, Mr. Marcus?

19 A Yes, there are. In the portion of my
20 testimony dealing with water use, in footnote 33,
21 there is a preliminary phrase that ends in the
22 word "equals" followed by a comma. Between the
23 "equals" and the comma, it should also say "593
24 acrefeet."

25 I also have one correction to the

1 portion of exhibit 616, which deals with
2 transmission and system engineering. I don't know
3 if I should make that correction now or wait on
4 that.

5 HEARING OFFICER CELLI: You might as
6 well go ahead. That last change to footnote 33
7 was an exhibit, which exhibit?

8 THE WITNESS: 616.

9 HEARING OFFICER CELLI: That was exhibit
10 616? I'm talking about the footnote to insert 593
11 acrefeet.

12 MS. GULESSERIAN: Oh, excuse me, that is
13 the -- correct, exhibit 616.

14 HEARING OFFICER CELLI: 616 was dealing
15 with water, correct?

16 THE WITNESS: 616 deals with both water
17 and transmission engineering.

18 HEARING OFFICER CELLI: Okay, so 616
19 does have -- Okay, that's my confusion. I'm
20 sorry, go ahead.

21 THE WITNESS: So I had one correction to
22 the portion of 616 dealing with water. That was
23 footnote 33. And an earlier portion of exhibit
24 616 in the last paragraph of the section on
25 transmission engineering, --

1 HEARING OFFICER CELLI: Is there a page
2 number?

3 THE WITNESS: Page 3 on my copy; I'm not
4 sure -- it's the end of section Roman II.

5 The paragraph, the second sentence
6 starts, "Given the uncertainty regarding the
7 deliverability of the full Beacon output" and then
8 goes on to say, "condition TSE-5 should be revised
9 to clarify the signed interconnection agreement as
10 a necessary precondition to the start of
11 construction."

12 For clarity it should say, "to the start
13 of power plant construction." So adding the one
14 word power plant.

15 BY MS. GULESSERIAN:

16 Q Do you have any other changes to your
17 testimony?

18 A No, I do not.

19 Q Are the opinions in your testimony your
20 own?

21 A Yes, they are.

22 Q Are they based on your professional
23 judgment?

24 A Yes, they are.

25 Q And are they based on your facts?

1 A Yes, they are.

2 Q Can you please summarize your testimony
3 and the basis for your conclusions.

4 HEARING OFFICER CELLI: Before you do I
5 just want to make clear that the parties stipulate
6 to this witness' expertise as it relates to soil
7 and water. Any objection, applicant, that he's an
8 expert on water and soil?

9 MS. LUCKHARDT: Well, I don't object to
10 his qualifications as an expert on different water
11 systems for cooling for construction. I would
12 object if he were to testify in the area of water,
13 groundwater, water policy or related subject
14 areas. If it is related to water use and the
15 specific confines of his testimony, I do not have
16 an objection -- of his previously written
17 testimony.

18 HEARING OFFICER CELLI: We have his
19 r, sum, on file as exhibit what, Ms. Gulesserian?

20 MS. GULESSERIAN: That would be exhibit
21 618.

22 HEARING OFFICER CELLI: 618. And is
23 there any objection to this expert testifying as
24 an expert, staff?

25 MR. BABULA: No objection.

1 HEARING OFFICER CELLI: Thank you. The
2 reason I'm doing this is so that we don't need to
3 get into your qualifications. We have that in the
4 record, so let's just get to the testimony,
5 please. You qualify as an expert.

6 THE WITNESS: Thank you. Was the
7 question regarding the portion of my testimony
8 about water use or are we doing the whole of my
9 testimony now?

10 HEARING OFFICER CELLI: At this time
11 we're talking about water.

12 BY MS. GULESSERIAN:

13 Q Can you please just summarize your
14 finding, your testimony on construction water use.

15 A My testimony shows that based on data in
16 the FSA there are inconsistencies in the FSA
17 regarding the amount of water required for
18 preconstruction use.

19 It shows that if the proposed reclaimed
20 water pipeline, specifically the RCSD pipeline,
21 but the conclusion would apply to California City,
22 as well, if the reclaimed water pipeline were
23 built prior to construction start of the project,
24 then reclaimed water could be used in lieu of
25 groundwater during construction, as well as during

1 operation. And that quantified how much of the
2 planned preconstruction water use could be met
3 with reclaimed water rather than groundwater.

4 It then has some additional sections
5 dealing with the economics of the proposals that
6 were identified in the FSA for use of reclaimed
7 water and use of dry cooling respectively.

8 MS. GULESSERIAN: Thank you.

9 HEARING OFFICER CELLI: Anything
10 further?

11 MS. GULESSERIAN: No, thank you very
12 much.

13 HEARING OFFICER CELLI: Staff, cross?

14 MR. BABULA: Well, I'm going to object
15 that they even shifted the burden. I don't see
16 anything in there about -- in his testimony,
17 either what was submitted or what he just said,
18 that deals with the feasibility of a construction
19 schedule that would require the acquisition of the
20 recycled water first. And completely finish that
21 part, and then get on to construction of the
22 project.

23 HEARING OFFICER CELLI: I recall reading
24 the testimony that supported the use of water --
25 recycled water during construction. I'm not sure

1 that he talked about any timeline, per se.

2 MR. BABULA: Right. Well, all he said
3 is that well, you should use it for construction.
4 There's a -- where it's page 4 of his testimony,
5 mitigation for water use during construction.

6 I don't see anything that indicates that
7 it's feasible to develop a project in a manner
8 where you would hook up into all the recycled
9 water first. I mean there's --

10 HEARING OFFICER CELLI: That sounds like
11 something that we're all going to end up reading
12 briefs, and I have the feeling --

13 MR. BABULA: Well, I think it's a
14 factual issue that hopefully the applicant,
15 they'll talk to. I know my people will speak to
16 that, too. But they haven't addressed it at all.

17 But, --

18 HEARING OFFICER CELLI: So, really --
19 you just --

20 MR. BABULA: Okay, I will --

21 HEARING OFFICER CELLI: -- keep it to
22 the factual level in his testimony, and we can
23 talk about the bigger picture --

24 MR. BABULA: Okay.

25 //

1 CROSS-EXAMINATION

2 BY MR. BABULA:

3 Q Well, then, my one question then would
4 be what did you look at to determine that it's
5 feasible for the applicant to acquire the recycled
6 water first?

7 A I didn't testify as to feasibility. I
8 have, in fact, attended workshops where I've heard
9 representatives of RCSD and California City talk
10 about feasibility and timing questions. But
11 that's not my testimony, and presumably that will
12 be briefed based on their testimony.

13 MS. GULESSERIAN: And as we've noted, we
14 intend to cross-examine the witnesses that staff
15 has identified and the applicant has identified on
16 this issue.

17 HEARING OFFICER CELLI: Okay, so further
18 cross?

19 MR. BABULA: That 's all I have.

20 HEARING OFFICER CELLI: Applicant, cross
21 of this witness, please?

22 MS. LUCKHARDT: No cross.

23 HEARING OFFICER CELLI: Thank you, Mr.
24 Marcus. Is there any redirect of this witness?

25 MS. GULESSERIAN: There is none.

1 HEARING OFFICER CELLI: Thank you. Call
2 your next witness.

3 We're dealing with water. Before you do
4 any of this, let's go off the record for a second.

5 (Off the record.)

6 HEARING OFFICER CELLI: Okay, with that
7 then I'm going to shift to applicant because I
8 just want to hear again for the record that
9 applicant has no further witnesses as to water at
10 this time?

11 MS. LUCKHARDT: That is correct.

12 HEARING OFFICER CELLI: Okay. And we've
13 received all of your water exhibits?

14 MS. LUCKHARDT: Right.

15 HEARING OFFICER CELLI: Okay. Yes, we
16 have. I start getting confused at this point.
17 So, staff, at this time you're going to call two
18 witnesses --

19 MR. BABULA: Well, first I've got my
20 staff here just to address some of the specific
21 issues that CURE brought up regarding the
22 construction water. So if they could be sworn in,
23 then we can --

24 HEARING OFFICER CELLI: How long are
25 they going to take?

1 MR. BABULA: Maybe three minutes, five,
2 something like that.

3 HEARING OFFICER CELLI: Okay, then I
4 think we can do this --

5 HEARING OFFICER CELLI: I think we
6 should get this done.

7 HEARING OFFICER CELLI: Well, let's do
8 that. Marlee, if you wouldn't mind.

9 Please rise and be sworn.
10 Whereupon,

11 CASEY WEAVER and JOHN FIO
12 were called as witnesses herein, and after first
13 having been duly sworn, were examined and
14 testified as follows:

15 HEARING OFFICER CELLI: Please state
16 your name and spell it for the record.

17 MR. WEAVER: My name's Casey Weaver,
18 C-a-s-e-y W-e-a-v-e-r.

19 HEARING OFFICER CELLI: You're from?

20 MR. WEAVER: I'm in the water unit with
21 the Energy Commission.

22 HEARING OFFICER CELLI: Thank you.

23 MR. FIO: And I'm John Fio, F-i-o. And
24 I'm a contractor to the Water Commission -- I mean
25 the Energy Commission.

1 (Laughter.)

2 HEARING OFFICER CELLI: Thank you, go
3 ahead, Mr. Babula.

4 DIRECT EXAMINATION

5 BY MR. BABULA:

6 Q Okay, first I just want to establish
7 that the two of you were the primary authors on
8 the soil and water sections in both the FSA, the
9 supplemental question we submitted as exhibits,
10 and the final supplemental version that the
11 applicant has in their exhibit, which is the final
12 condition of certification that we had agreed with
13 last week.

14 MR. WEAVER: Yes, I was an author of the
15 FSA.

16 MR. FIO: Yes, and I was, too.

17 HEARING OFFICER CELLI: And when you
18 speak, since we're going to do this by way of
19 panel, I'm going to, after every question and
20 whoever you address it to, you're going to have to
21 identify yourself as the speaker each time for the
22 benefit of the transcript. Thank you.

23 MR. BABULA: Okay, you've already
24 submitted that the testimony in the FSA, both
25 regarding water resources, so you don't need to

1 repeat any of that testimony.

2 CURE has submitted testimony from David
3 Marcus, both written and you just heard it in the
4 oral format. Have you reviewed the previously
5 submitted written testimony?

6 MR. WEAVER: This is Casey Weaver. Yes,
7 I have.

8 MR. FIO: This is John Fio, and yes, I
9 have.

10 MR. BABULA: Okay. Do you have any
11 response to CURE's suggestion here that recycled
12 water should be used for construction, and
13 response to what Mr. Marcus just testified to?

14 MR. WEAVER: Yes. Again, this is Casey.
15 The availability of recycled water is present in
16 both California City and Rosamond. However, there
17 is no delivery system readily available for use in
18 construction on the property.

19 Additionally, the volumes available from
20 both those facilities are really insignificant
21 compared to the volumes of water required for the
22 construction.

23 My calculations show that California
24 City could potentially produce 1.4 percent of the
25 construction water by trucking that water in

1 10,000-gallon trucks at a rate of one truck every
2 53 minutes. So that would be two trucks on the
3 road 24/7 for five months.

4 Additionally, for Rosamond, that's a,
5 you know, 42-mile run for trucks. They would be
6 more frequent than the California City one, the
7 longer distance. But also they could provide up
8 to 3.4 percent of the construction water.

9 Looking at the volumes, that's really
10 insignificant. And I would say not really
11 reasonably available for that use.

12 MR. BABULA: Now for the -- in your
13 analysis of the use of construction water, is
14 there -- do you find that there's appropriate
15 mitigation to deal with the use of that water?

16 HEARING OFFICER CELLI: I just wanted to
17 -- when you say that water, what water are we
18 talking about?

19 MR. BABULA: Talking about the use of
20 the onsite potable water for construction.

21 HEARING OFFICER CELLI: Okay, thank you.

22 MR. WEAVER: This is Casey Weaver,
23 again. We looked at the amount of water that
24 would be used. We ran different models using the
25 estimated volume of water required for

1 construction.

2 Looked at what kind of drawdowns we'd
3 expect, what impacts could possibly occur in the
4 area. Determined that there really wouldn't be
5 significant impacts to other users of groundwater
6 in the vicinity during that period of time.

7 And set up conditions of certification
8 to measure groundwater declines or water levels
9 dropping during the construction period. And
10 developed mitigation measures in the event that
11 declines did occur enough to significantly impact
12 neighboring wells.

13 HEARING OFFICER CELLI: And that data is
14 in a condition right now? There's a condition
15 that says what must have, and if there is --
16 there's a condition that says what is the
17 significant drawdown and what measures must be
18 implemented in the event if that threshold of
19 significance is met?

20 MR. WEAVER: Yes, that's correct.
21 That's in water condition -- well, condition of
22 certification soil and water-1.

23 HEARING OFFICER CELLI: Thank you.

24 (Pause.)

25 MR. WEAVER: In summary, I'd like to

1 throw a little thing together here that I drafted
2 up.

3 For construction Beacon proposes to use
4 up to 8086 acrefeet of onsite groundwater. This
5 number equates to approximately 7.6 million
6 gallons per day.

7 I'd like to emphasize that the
8 construction water use is temporary. The majority
9 of the water use will occur in the first five
10 months of construction.

11 Groundwater modeling indicates there
12 will not be a long-term impact to water supply or
13 significantly impact neighboring wells. And the
14 groundwater well monitoring program and mitigation
15 measures provided in the conditions of
16 certification will track site groundwater
17 conditions and provide measures to mitigate
18 groundwater impacts to neighboring wells if they
19 develop.

20 MR. BABULA: I don't have any further
21 questions.

22 HEARING OFFICER CELLI: Cross by
23 applicant, please.

24 MS. LUCKHARDT: No cross.

25 HEARING OFFICER CELLI: Cross by CURE,

1 please.

2 MS. GULESSERIAN: Thank you.

3 CROSS-EXAMINATION

4 BY MS. GULESSERIAN:

5 Q Mr. Weaver, what drives the need for
6 large amounts of water at the start of
7 construction?

8 MR. WEAVER: This is Casey Weaver. The
9 project plan is to excavate as much as 8 million
10 cubic yards of soil during the construction phase.
11 The schedule is -- I'm not real clear on the exact
12 schedule. Initially I thought they were going to
13 do the drainage channel first. They may not be
14 obligated to do that.

15 However, the construction program is
16 designed to occur during the first five months of
17 construction. Moving 8 million cubic yards of
18 soil is going to require a significant amount of
19 water for dust suppression, for compaction, for
20 use in building materials, concrete, soil
21 conditioning for compaction, different
22 construction needs.

23 MS. GULESSERIAN: Okay. So you said
24 you're not aware of the construction schedule?

25 MR. WEAVER: Well, the schedule is going

1 to be in five months. I'm talking about the
2 sequence. Whether they're going to build the
3 channel first, or do grading and channel -- well,
4 they won't do the channel construction -- they
5 need to maintain the flow across the site for the
6 100-year flood through Pine Tree Creek.

7 So, there's options that they can use in
8 their sequencing. I don't know what their
9 procedure is.

10 MS. GULESSERIAN: Okay, so there are
11 options in how to phase in project construction.
12 Is it possible that they could be phased in to
13 smooth out the water demand so that the bulk of it
14 would not occur within the first five months?

15 MS. LUCKHARDT: Objection. I'm not sure
16 that this is relevant or correct for this witness,
17 and maybe I'm jumping all over Jared's --

18 HEARING OFFICER CELLI: Overruled. It's
19 relevant.

20 MR. BABULA: The sequence of
21 construction.

22 MS. LUCKHARDT: Yeah.

23 MR. BABULA: I think that might be more
24 of an engineering question. We know what's going
25 to happen, but if it's A, B, C or D, C, K.

1 HEARING OFFICER CELLI: If you know, Mr.
2 Weaver.

3 MR. WEAVER: I don't know the
4 sequencing. Their program is to do this mass
5 grading within the first five months. The mass
6 grading is going to be level the site to a
7 particular slope, approximately 1 percent.

8 HEARING OFFICER CELLI: Oh, mass
9 grading?

10 MR. WEAVER: Grading.

11 HEARING OFFICER CELLI: I thought you
12 were saying masquerade.

13 (Laughter.)

14 HEARING OFFICER CELLI: Just to get back
15 to --

16 MR. WEAVER: Grading.

17 HEARING OFFICER CELLI: Just to get back
18 to the question, the question was, in your
19 opinion, is it possible to change the sequence of,
20 I guess the intensive water effects of
21 construction to a different time and sequence? Do
22 I have that --

23 MS. GULESSERIAN: Right.

24 MS. LUCKHARDT: I'm just not sure if
25 that's an appropriate question for this witness.

1 This is a water expert. And it's my understanding
2 that he takes the water numbers that are presented
3 by others and then looks at them to see whether he
4 thinks they're appropriate to cover the work
5 that's being done. But isn't necessarily
6 testifying as an expert on construction methods or
7 moving the construction sequence from one time
8 period to another.

9 So I'm just not sure that this is within
10 his areas of expertise.

11 HEARING OFFICER CELLI: That's
12 reasonable. I think that is beyond the pale of
13 what we're trying to accomplish here. So, I think
14 you'd better --

15 MS. GULESSERIAN: I can move on. Did
16 you evaluate different phases, different options
17 for phasing in construction?

18 MR. WEAVER: No. I looked at the time
19 of mass grading of the initial construction, the
20 amount of soil to be moved, and the amount of
21 water that was going to be required to suppress
22 the dust and manage the soils onsite.

23 MS. GULESSERIAN: Okay, so if you were
24 provided with different options for phasing
25 construction, such as would occur if, you know,

1 evaluations of cultural resources on part of the
2 site was deferred to a later time, was to not
3 allow construction on that part of the site, and
4 then you had different numbers regarding the
5 amount of soil that needs to be moved during the
6 first five months, would that change your analysis
7 of how much water needs to occur within the first
8 five months?

9 MS. LUCKHARDT: Objection, I'd like to
10 clarify that this is a hypothetical, because I
11 don't believe it reflects the facts in evidence on
12 cultural resources at this time.

13 HEARING OFFICER CELLI: It's
14 hypothetical. You may answer that question.

15 MR. WEAVER: I didn't evaluate that. I
16 looked at the schedule, which is intense. It's a
17 very aggressive construction schedule. Phasing
18 sequencing didn't fit into the overall
19 requirements.

20 You know, the five-month construction
21 period for moving 8 million cubic yards is moving
22 a lot of soil. And in order to keep the dust
23 suppressed and to properly condition the soils,
24 that was my focus. Not on a phased approach of
25 any particular months, other than what they

1 provided in the AFC.

2 MS. GULESSERIAN: Okay, thank you. The
3 FSA states that water use during construction will
4 be 6574 acrefeet on page 4.9-16, and then 8080
5 acrefeet on page 6-4. And then it says that it's
6 going to exceed 8086 on page 4.9-55.

7 Then we have a condition of
8 certification that says up to 8086 acrefeet is
9 going to be permitted.

10 Have you determined which number is the
11 right number? What number will actually be used
12 during construction?

13 MR. WEAVER: We have limited the volume
14 for what they can use in construction to 8086
15 acrefeet. They may use less. We hope they use
16 less. We've conditioned them to use no more than
17 8086.

18 HEARING OFFICER CELLI: Maximum use is
19 how much?

20 MR. WEAVER: 8086 acrefeet for the
21 construction period.

22 HEARING OFFICER CELLI: 8-0-8-6. Thank
23 you.

24 MS. GULESSERIAN: And what is the -- can
25 you summarize what the 8086 is based on?

1 MR. WEAVER: Yes. Initially in the AFC
2 the applicant provided a volume of water required
3 for construction. Looking at that amount of
4 water, that amount of soil, the same ratio of soil
5 to water that they had come up with. The had 3370
6 acrefeet of water.

7 Adding into that the -- it didn't appear
8 in the information that they provided that they
9 had accounted for the 3 million cubic yards for
10 the diversion channel. So I included that same
11 ratio into that other 3 million cubic yards of
12 soil and came up with 6574 acrefeet required for
13 the 8 million cubic yards of soil to be excavated,
14 recompacted, and organized onsite.

15 Further, I went through the initial
16 estimate of silt content, was 7.5 percent.
17 Looking through the boring logs and the sample
18 results, it varied between 5 and 7.79 percent silt
19 content.

20 I averaged that; looked at the
21 difference between what they had submitted
22 initially -- excuse me, the difference between 7.5
23 percent and the average was 22.9. I rounded that
24 to 23 percent and increased the amount of water
25 required by that 23 percent, which is multiplied

1 6574 by 23 percent, which yields 1512 acrefeet.

2 Added to the 6574, comes to 8086.

3 MS. GULESSERIAN: Thank you.

4 MR. WEAVER: You're welcome.

5 MS. GULESSERIAN: Have you reviewed the
6 applicant's rebuttal testimony, that of Michael
7 Flack, exhibit 335?

8 MR. WEAVER: I'm sure I have. I don't
9 know it by number.

10 MS. GULESSERIAN: In that rebuttal the
11 applicant claims that they have calculated the
12 impacts on water tables of pumping 8000 acrefeet
13 in five months. And that those are not
14 significant. Does staff agree with those
15 findings?

16 MS. LUCKHARDT: I guess I -- if that's
17 all she's asking, that's fine.

18 MR. FIO: This is John Fio. And in
19 terms of analysis and modeling the construction
20 scenario, there was no exceedances of the
21 thresholds that were used in the final staff
22 assessment. So our conclusion was that there
23 would be no impact.

24 And furthermore, we felt that the
25 monitoring program that was in place that would

1 actually be measuring what really goes on out
2 there would be even more effective than the
3 modeling, itself.

4 MS. GULESSERIAN: Is staff's analysis of
5 those impacts from 8086 acrefeet that are in the
6 applicant's rebuttal testimony somewhere in the
7 FSA?

8 MR. BABULA: Well, the rebuttal
9 testimony came after the FSA. Are you asking
10 whether there's any analysis on groundwater for
11 construction?

12 MR. FIO: The record --

13 HEARING OFFICER CELLI: For the record,
14 Ms. Gulesserian nodded in the affirmative.

15 MS. GULESSERIAN: Yes.

16 HEARING OFFICER CELLI: Thank you.

17 MS. GULESSERIAN: Thank you.

18 HEARING OFFICER CELLI: And you may
19 answer the question.

20 MR. FIO: This is John Fio. What we did
21 do was we actually looked at a worst case scenario
22 where we looked at the higher construction water
23 use of the 8086 acrefeet. Based it on with the
24 project using groundwater.

25 And so this would represent a

1 substantially greater amount of groundwater being
2 used. And our determination was that there was
3 not a significant change in the impact analysis.

4 HEARING OFFICER CELLI: Any further
5 cross?

6 MS. GULESSERIAN: Does staff -- have you
7 had an opportunity -- asking Mr. Weaver -- to
8 review Mr. Marcus' calculations in his testimony
9 regarding the rate of water use during
10 construction?

11 MR. WEAVER: What I thought I saw was
12 the rate of use of recycled water delivered of 27
13 percent of construction water requirements for
14 recycled water. And I didn't bother with that
15 because I don't think it's a viable alternative.

16 I don't believe that the recycled water is
17 readily available.

18 MS. GULESSERIAN: So do you disagree
19 with the testimony?

20 MR. WEAVER: Excuse me, for
21 construction. We know it was going to be
22 available for operation.

23 MS. GULESSERIAN: So do you disagree
24 with the conclusion that 27 percent of the water
25 would be available for construction?

1 MR. WEAVER: If the water's not
2 available to use, then it doesn't matter what
3 number that is if it's not going to be available.

4 MS. GULESSERIAN: Assuming that a
5 pipeline is constructed prior to construction of
6 the project, would you disagree with that number?

7 MR. WEAVER: I didn't evaluate the
8 number because I didn't think that it was a viable
9 element of the project.

10 HEARING OFFICER CELLI: So your question
11 was a hypothetical, assuming that there was a
12 construction pipeline in place --

13 MS. GULESSERIAN: Prior to construction.

14 HEARING OFFICER CELLI: -- let's say
15 from Rosamond or California City to the --

16 MR. BABULA: Right, and there's no
17 evidence in the record that it would be available
18 before.

19 HEARING OFFICER CELLI: I understand.
20 That's a hypothetical question. Please, Ms.
21 Gulesserian, go ahead.

22 MS. GULESSERIAN: Thank you. I don't
23 have any further questions.

24 HEARING OFFICER CELLI: Thank you. Any
25 cross from applicant?

1 MS. GULESSERIAN: Oh, sorry, I need to
2 clarify who is sponsoring exhibit 337. Yeah, this
3 is -- if you wouldn't mind I have a few more
4 questions regarding the revised conditions that
5 were sent out on Friday night.

6 HEARING OFFICER CELLI: 339?

7 MS. LUCKHARDT: This is the revised
8 conditions of certification for soil and water-1
9 and appendix I. It was discussed in the parties
10 pursuant to a conference all upon which CURE was
11 given an opportunity to attend. I can't remember
12 how much of it they actually participated in. And
13 that is the result that was discussed on that
14 call, what is in exhibit 337.

15 HEARING OFFICER CELLI: This is
16 stipulated settled conditions of certification?

17 MS. LUCKHARDT: Correct.

18 HEARING OFFICER CELLI: Thank you. Who
19 will be sponsoring that?

20 MS. LUCKHARDT: We have offered it into
21 evidence under -- we can have Mr. Flack sponsor
22 it. We offered it into evidence as a stipulated
23 settlement document between -- or stipulated
24 resolution to --

25 HEARING OFFICER CELLI: That's correct.

1 At the prehearing conference --

2 MS. LUCKHARDT: -- issues --

3 HEARING OFFICER CELLI: -- we asked the
4 parties to stipulate to --

5 MS. LUCKHARDT: Yeah.

6 MS. GULESSERIAN: I'm going to --

7 MR. BABULA: The authors are right here.

8 HEARING OFFICER CELLI: Okay. Well,
9 then, do you want to just -- we'd be willing to
10 take the stipulation.

11 MS. GULESSERIAN: Would you mind if I
12 just asked a few more questions regarding exhibit
13 337 of these witnesses?

14 HEARING OFFICER CELLI: Okay. I thought
15 it was 339. It's 337 you're talking about?

16 MS. GULESSERIAN: It's -- sorry, I might
17 have the number wrong.

18 MS. LUCKHARDT: I believe it's 337.

19 HEARING OFFICER CELLI: Okay. So
20 revised soil and water conditions of
21 certification.

22 MS. GULESSERIAN: Thank you. Looking to
23 the table provided in this condition what
24 determines when the California City collection
25 system construction year starts?

1 MR. WEAVER: That would be the year in
2 which they begin construction.

3 MS. GULESSERIAN: When do you expect
4 them to begin construction? What is it based on?

5 MR. WEAVER: You know, the project will
6 have to be improved. Couldn't put a schedule in.
7 It's not based on that, it's based on when it will
8 be constructed, assuming that it will be before
9 the beginning of operation. That's what this
10 table's based on.

11 MS. GULESSERIAN: So what determines
12 when that starts? Is it the approval of this
13 project?

14 MR. WEAVER: You'd have to talk to
15 California City.

16 MS. GULESSERIAN: Okay. Could
17 construction of the collection system start before
18 power plant operation?

19 MR. WEAVER: That's part of the
20 construction; that's the California City, the
21 collection system. Again, you'd --

22 MS. GULESSERIAN: So, just in your --

23 MR. WEAVER: -- have to talk to
24 California City for the sequence.

25 MS. GULESSERIAN: -- that the

1 construction of the collection system could start
2 before power plant operation because it's
3 California City's construction project?

4 MR. WEAVER: It's California City's
5 construction project. What their schedule is I
6 don't know. I don't know what date they're going
7 to start. This table indicates what they can do
8 per year once construction starts. So --

9 MS. GULESSERIAN: Okay, I'm trying to
10 determine who has control over this condition of
11 certification as to timing. Is it the applicant?
12 Is it the Energy Commission's approval of the
13 project? Or is it California City?

14 MR. BABULA: Well, this is a condition
15 of certification. And we only have authority over
16 the applicant, so this condition of certification
17 is on the applicant.

18 If, for some reason, the water isn't
19 available or a different thing, then the
20 applicant's stuck. That's what they can get.
21 They can get up to, as it lifts out, how much
22 acrefeet of onsite water they can use.

23 MS. GULESSERIAN: You just said that --
24 are you testifying?

25 MR. BABULA: Well, I --

1 MS. GULESSERIAN: I'm sorry, --

2 MR. BABULA: -- the condition of
3 certification is a legal issue --

4 MS. GULESSERIAN: -- I'm confused what
5 witness --

6 MR. BABULA: It's a legal issue --

7 (Parties speaking simultaneously.)

8 MR. BABULA: -- the conditions can be
9 on. It can only be on the applicant.

10 HEARING OFFICER CELLI: Right. In other
11 words, if there's a condition precedent in the
12 condition of certification, and that has not been
13 fulfilled, then applicant can't go forward. And
14 that is a risk that the applicant assumes.

15 MS. GULESSERIAN: Is there, Mr. Weaver,
16 is there a condition of certification that
17 prohibits construction of the power plant until it
18 is verified that California City will be
19 delivering water?

20 MR. WEAVER: No. California City is one
21 of two options. They've agreed to use recycled
22 water for power plant cooling. And the
23 alternative has not yet been selected.

24 MS. GULESSERIAN: Is there a condition
25 of certification prohibiting construction of the

1 project without -- let me make sure I'm phrasing
2 this right.

3 Is there a condition of certification
4 prohibiting construction if there's no guaranteed
5 recycle water alternative?

6 MR. WEAVER: The only way that they can
7 use groundwater for power plant cooling is with
8 the California City option. If they select a
9 different alternative they can't use groundwater
10 for cooling. They're limited to 153 acrefeet per
11 year of groundwater use for balance of plant use.

12 MS. GULESSERIAN: Okay. So, if the
13 applicant selects California City recycled water
14 alternative, and California City does not
15 construct the pipeline, the collection system,
16 excuse me, the collection system until after
17 operations, would that be -- well, then what
18 happens?

19 MR. WEAVER: They wouldn't be allowed to
20 operate.

21 MS. GULESSERIAN: Which condition sets
22 forth these parameters for not allowing operation
23 in the event that the recycled water alternatives,
24 or the recycled facilities are not upgraded and
25 the pipelines are not constructed?

1 HEARING OFFICER CELLI: I might be able
2 to short-circuit --

3 MS. LUCKHARDT: I'd just direct your
4 attention to --

5 HEARING OFFICER CELLI: If I could --

6 MS. LUCKHARDT: -- soil and water-18.

7 HEARING OFFICER CELLI: In our general
8 conditions if there's any failure of conditions
9 there's no license. And so, there isn't
10 necessarily a needed explicit condition on that
11 point.

12 But the fact is if there's noncompliance
13 there's no operation. And so if the water options
14 are California City or Rosamond City, these are
15 your options for cooling water, and they want to
16 go to a third option, they either have to amend or
17 not. But there will be no operation without full
18 compliance with our conditions.

19 MS. GULESSERIAN: Excuse me a moment.

20 HEARING OFFICER CELLI: I'd just note
21 for the record it's 12:35, and we're going to be
22 done through this in about five minutes about 20
23 minutes ago.

24 MR. BABULA: I was.

25 MR. WEAVER: To resolve that last

1 question, soil and water condition 18 satisfies
2 that requirement.

3 HEARING OFFICER CELLI: Did you hear
4 that, Ms. Gulesserian? 18?

5 MR. WEAVER: Soil and water-18.

6 MS. GULESSERIAN: Thank you. What's the
7 latest possible date that California City
8 collection system construction year one can begin
9 in order to provide these numbers that are listed
10 here?

11 MR. WEAVER: Again, we didn't select a
12 date. And that's a contractual thing with the
13 entities that are going to do the construction.

14 MS. GULESSERIAN: Right. I mean so how
15 do you know -- can it occur after commercial
16 operation of the project?

17 MR. WEAVER: No. They're limited within
18 60 days. They have to have -- what's the number
19 there -- 14? Within 60 days prior to the
20 connection of the recycled water pipeline the
21 owner shall submit two copies of an executed
22 agreement to supply 1424 acrefeet of water.

23 MS. GULESSERIAN: So you just stated
24 within 60 days prior to connection to the system
25 they have to provide a letter of intent?

1 MR. WEAVER: No, that would be for --
2 no, that they -- more than the intent, that they
3 have an executed agreement for the supply.

4 MS. GULESSERIAN: Okay, so -- but I
5 guess that doesn't answer the question. If the --
6 what happens if the pipeline does not -- is not
7 constructed?

8 MR. WEAVER: They wouldn't be able to
9 operate. They wouldn't have the water supply --

10 MS. GULESSERIAN: Okay, thank you.

11 MR. WEAVER: -- to the site.

12 HEARING OFFICER CELLI: Anything
13 further? Any further cross, Ms. Gulesserian?

14 MS. GULESSERIAN: No, no further cross.

15 HEARING OFFICER CELLI: Thank you.

16 Applicant, any cross of these witnesses?

17 MS. LUCKHARDT: No cross.

18 HEARING OFFICER CELLI: Redirect by
19 staff of your witnesses?

20 MR. BABULA: No.

21 HEARING OFFICER CELLI: Any other
22 witnesses that staff wanted to call in rebuttal
23 regarding water?

24 MR. BABULA: Well, you have Cal City and
25 Rosamond, both, to sponsor the exhibit, if this is

1 an appropriate time for that.

2 HEARING OFFICER CELLI: What we're going
3 to do is we're going to take a lunch break. It's
4 20 of one. I think if we break until 1:00, we can
5 resume at 1:00. But when we resume I want to know
6 what --

7 MR. BABULA: Well, I would like to try
8 to finish water now. I mean, I just want that --
9 you know, really the question is what does CURE
10 have to cross on, because what I --

11 HEARING OFFICER CELLI: They're finished
12 with their water people at this time.

13 MS. GULESSERIAN: We have cross for
14 Rosamond Community Services District and
15 California City.

16 HEARING OFFICER CELLI: Okay. So I
17 think we can call that witness after lunch. And
18 that should take about ten minutes tops. And ask
19 your questions of Rosamond.

20 And so you're going to have them sponsor
21 testimony, ask a couple questions, I imagine;
22 applicant to ask questions. CURE will be able to
23 cross-examine. Then you can redirect. And then I
24 believe that's the end of water.

25 MS. GULESSERIAN: I also have --

1 HEARING OFFICER CELLI: Would that --

2 MS. GULESSERIAN: Sorry. I also have a
3 few questions for the applicant's witness.

4 HEARING OFFICER CELLI: But the
5 applicant doesn't have a witness.

6 MS. GULESSERIAN: They have somebody
7 sponsoring water testimony.

8 HEARING OFFICER CELLI: Which witness is
9 that?

10 MS. GULESSERIAN: Duane McCloud.

11 HEARING OFFICER CELLI: Okay. And is he
12 here?

13 MS. LUCKHARDT: He will not be here
14 until about 1:30. That's the engineer. I'm not
15 sure what questions she had; that wasn't indicated
16 in the information on --

17 HEARING OFFICER CELLI: I think we had
18 like --

19 MS. LUCKHARDT: -- who she wanted to
20 cross-examine in this area. So, we have Mike
21 Flack is here, if she has questions on the
22 testimony he has sponsored.

23 If she has water questions of Mr.
24 McCloud he won't be here until about 1:30.

25 HEARING OFFICER CELLI: Here's what

1 we're going to do. We're going to take a 20-
2 minute break. We're going to resume at 1:00.

3 Now, folks, by now we should have
4 finished water and biology. And we haven't even
5 gotten to bio yet. So I'm going to ask the
6 parties to limit your inquiries.

7 If you're just calling witnesses to
8 sponsor testimony that's coming in that should
9 take all of about two minutes. And then cross on
10 these witnesses -- how many questions do you have,
11 Ms. Gulesserian, for Mr. -- the gentleman from
12 Rosamond?

13 MS. GULESSERIAN: I have eight --

14 HEARING OFFICER CELLI: Questions for --

15 MS. GULESSERIAN: -- about eight to ten
16 questions.

17 HEARING OFFICER CELLI: Okay. And then
18 how many questions do you have for --

19 MS. GULESSERIAN: That is for the
20 Rosamond person --

21 HEARING OFFICER CELLI: -- Duane McCloud
22 that you wanted to ask?

23 MS. GULESSERIAN: And for the California
24 City representative, it's the same questions.

25 HEARING OFFICER CELLI: Okay. Well,

1 we'll call them as a panel. But we need to move
2 with alacrity. What about your questions for
3 applicant's witness?

4 MS. GULESSERIAN: Those I have 13
5 questions.

6 HEARING OFFICER CELLI: Okay. We'll do
7 this. Okay, five minutes when we resume at 1:00,
8 we'll take five minutes for the gentlemen from
9 Rosamond and California City as a panel. And then
10 we'll give you another five, maybe ten minutes on
11 Duane McCloud when he comes. I guess you'll have
12 to hold that in abeyance until he arrives.

13 And then we need to move on. And that's
14 it on water, is that correct? Do I have that
15 right?

16 MS. GULESSERIAN: Yes. I also have a
17 suggestion that we fit transmission system
18 engineering into that short amount of time,
19 because we have just a little bit of time on that
20 issue. And then we could dismiss our witness for
21 the remainder of --

22 HEARING OFFICER CELLI: That's fine,
23 too. If we end up having to wait for Mr. McCloud,
24 maybe we can insert a little transmission --

25 MS. LUCKHARDT: Yeah, the only problem

1 is that our witness on transmission system
2 engineering is Duane McCloud.

3 (Laughter.)

4 MS. LUCKHARDT: We were supposed to
5 start with biology.

6 HEARING OFFICER CELLI: -- better to be
7 a specialist these days.

8 Let's break now and then we will resolve
9 these issues when we get back. And when we resume
10 we're going to take testimony from the gentlemen
11 from Rosamond and California City.

12 (Whereupon, at 12:39 p.m., the hearing
13 was adjourned, to reconvene at 1:00
14 p.m., this same day.)

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1 AFTERNOON SESSION

2 1:02 p.m.

3 HEARING OFFICER CELLI: All right. The
4 record should reflect it's about 1:02 in the
5 afternoon, March 22, 2010. Beacon Solar Energy
6 Project, evidentiary hearing. We are in the
7 middle of taking evidence on the topic area of
8 soil and water.

9 And where we're going to proceed to this
10 point is staff is going to call their witnesses,
11 sponsor evidence. And then we will allow the
12 parties to cross. And then CURE had a request to
13 do cross one last witness, and then we will finish
14 up with soil and water at that point.

15 So with that, Mr. Babula, go ahead.

16 MR. BABULA: Could we have them sworn
17 in?

18 HEARING OFFICER CELLI: Yes, thank you.
19 If I may have the witnesses sworn.
20 Whereupon,

21 MICHAEL BEVINS and DENNIS LaMOREAUX
22 were called as witnesses herein, and after first
23 having been duly sworn, were examined and
24 testified as follows:

25 HEARING OFFICER CELLI: Please state

1 your name and spell it for the record.

2 MR BEVINS: Michael Bevins, Public Works
3 Director, City of California City. B-e-v-i-n-s.

4 MR. LaMOREAUX: I'm Dennis LaMoreaux
5 representing Rosamond Community Services District.
6 Last name is spelled L-a-M-o-r-e-a-u-x.

7 HEARING OFFICER CELLI: Thank you. And
8 when you testify please remember to state your
9 name each time before you start because we're
10 going to let the parties ask you jointly
11 questions. So before you answer state your name.
12 Go ahead.

13 MR. BABULA: Okay, thank you.

14 DIRECT EXAMINATION

15 BY MR. BABULA:

16 Q The primary reason you're here is to
17 sponsor exhibit 506, which exhibit 506 is
18 previously submitted to the docket. It contained
19 a proposed plan by both Rosamond and California
20 City to provide the project with tertiary treated
21 recycled water.

22 And so what I want you to do is just
23 confirm that, in fact, this is a proposal from
24 your respective locations. And just to briefly
25 summarize the main content of the proposal so we

1 can get that in the record.

2 And I'll start with Rosamond, and
3 Dennis, thank you.

4 MR. LaMOREAUX: Dennis LaMoreaux with
5 Rosamond Community Services District. The
6 District did submit a letter of intent dated
7 August 14, 2009.

8 The three major components of that were
9 additional treatment to bring existing wastewater
10 flows to tertiary level, transmission facilities
11 to move the water to the project site, and
12 seasonal storage at the project site to handle
13 peak flows needed during the summer.

14 The additional treatment facilities at
15 Rosamond would be handled by Rosamond with a
16 contribution by Beacon of the transmission
17 facilities and storage facility were proposed to
18 be constructed by Beacon.

19 MR. BABULA: Has there been any changes
20 to storage?

21 MR. LaMOREAUX: Based on discussions at
22 earlier hearings the District has reworked a
23 proposal to move that storage back to the Rosamond
24 site, and re-size the transmission line to have
25 capacity for handling peak flows.

1 But the three major components are still
2 the same, it's just a matter of shuffling them
3 around a little bit.

4 MR. BABULA: Thank you. Now for
5 California City.

6 MR BEVINS: California City's proposal
7 essentially is the same as Rosamond's. We
8 proposed a transmission main and a wastewater
9 treatment plant expansion from our current 1.5
10 million gallons a day to 3 million gallons a day.

11 We also are proposing a sewer main
12 expansion which would bring an additional almost
13 2500 septic tanks on to the line to be able to
14 provide the additional flow necessary.

15 MR. BABULA: Is that it?

16 MR BEVINS: That's it.

17 MR. BABULA: One question for California
18 City. Is there a benefit to pulling homes off of
19 the septic system that this project can assist?

20 MR BEVINS: California City has a 1989
21 contract, letter of understanding, with the
22 Lahontan Regional Water Quality Control Board
23 which limits our ability to build facilities,
24 residential homes to two homes per acre.

25 We have a large number of already-

1 platted lots which will be impacted by this. And
2 so the benefit to us is that it will allow our
3 city to grow in --

4 MS. GULESSERIAN: Objection, this is new
5 testimony that we've never -- excuse me, this is
6 new testimony that hasn't been submitted in this
7 proceeding. And that is what they're trying to
8 put in right now is some sort of analysis of
9 benefits of upgrading their facilities.

10 HEARING OFFICER CELLI: We did hear this
11 as comment, I'm trying to remember when.

12 MS. LUCKHARDT: At the December 1st
13 status conference.

14 HEARING OFFICER CELLI: That's right.
15 There was comment at that time. So this isn't the
16 first we've heard of it. I think we can just get
17 a good summary of it.

18 MR BEVINS: That's actually the end of
19 the summary.

20 MR. BABULA: Okay.

21 HEARING OFFICER CELLI: So that -- the
22 exhibit --

23 MR. BABULA: 506.

24 HEARING OFFICER CELLI: -- 506 does
25 contain a discussion of the benefits to California

1 City. Because I remember in your comments, Mr.
2 Bevins, you were talking about sort of a toxic
3 state in which the septic systems were -- your
4 population had risen to the point that there was
5 some danger to the groundwater.

6 MR BEVINS: Our principal problem here
7 is that California City was a preplanned
8 community, as we told you in December. And in
9 that lots were created. In the '60s, early '60s
10 when this was done there was no particular problem
11 with that.

12 However, federal law has changed and
13 Lahontan required us in '89 to sign a letter of
14 intent which said that we would only a certain
15 building ratio.

16 That will eliminate about a third of the
17 already platted building lots from their ability
18 to grow and develop. Because to exceed that would
19 create a groundwater problem. With too much
20 density, a saturation problem with too much septic
21 density.

22 HEARING OFFICER CELLI: Thank you. And
23 that's contained in 506, is that correct?

24 MR. BABULA: I think the raw data
25 information and costs are in 506.

1 HEARING OFFICER CELLI: Thank you. Do
2 you have anything further --

3 MR. BABULA: I have no further
4 questions.

5 MS. LUCKHARDT: I have three questions
6 starting with Rosamond.

7 CROSS-EXAMINATION

8 BY MS. LUCKHARDT:

9 Q There are two expansions, it's my
10 understanding. The one is already under
11 construction at this time. And are there other
12 projects for the second expansion to your
13 facility, are there other projects that are also
14 looking to obtain tertiary treated water from you,
15 as well?

16 MR. LaMOREAUX: This is Dennis
17 LaMoreaux. Yes, there's expansion to half-a-
18 million gallons a day of tertiary treatment is
19 essentially complete other than permitting.

20 And beyond that, to go to a greater
21 level of tertiary level or treatment, there are
22 other customers that will occur for. There's
23 other solar projects that are interested, and a
24 mining operation that is interested.

25 MS. LUCKHARDT: Thank you. And, Mr.

1 Bevins, turning to you, is California City
2 required to make the changes that we've been
3 discussing with septic and upgrading your
4 treatment plant regardless of whether the Beacon
5 project goes forward?

6 MR BEVINS: Yes. And we are moving
7 forward in that direction regardless of the status
8 with Beacon.

9 MS. LUCKHARDT: And does the limitation,
10 the current limitation on houses -- for better
11 words, I'm just going to say per block, would that
12 in any way limit the number of houses you could
13 build within California City?

14 MR BEVINS: The restriction would limit
15 the density by which they could be built. It
16 restricts us to two homes per acre, which is not
17 consistent with the already platted lots for the
18 city.

19 MS. LUCKHARDT: But are you going to run
20 out of lots anytime soon? If people couldn't
21 build, if you could build six on a block --

22 MR BEVINS: I have --

23 MS. LUCKHARDT: -- do you have plenty of
24 lots?

25 MR BEVINS: I have 23,000 currently

1 platted residential unbuilt-on lots. We're not
2 likely to run out in the near future of unplatted
3 lots.

4 However, if I may, the problem is that
5 by being compliant with Lahontan's requirements, I
6 come into violation with planning areas for carbon
7 footprint reductions. Because my city winds up
8 being -- it doesn't allow me to consolidate my
9 city in a dense enough fashion to comply with
10 carbon footprint reduction requirements.

11 MS. LUCKHARDT: Thank you. I have
12 nothing further.

13 HEARING OFFICER CELLI: CURE?

14 CROSS-EXAMINATION

15 BY MS. GULESSERIAN:

16 Q This is a question for Rosamond first.
17 From the time you get notice to proceed from
18 Beacon, can you supply any water immediately to
19 the project?

20 MR. LaMOREAUX: By notice to proceed do
21 you -- this is Dennis LaMoreaux --

22 MS. GULESSERIAN: That they are going
23 with the --

24 (Parties speaking simultaneously.)

25 MR. LaMOREAUX: -- do you mean a --

1 MS. GULESSERIAN: -- Rosamond --

2 MR. LaMOREAUX: -- a signed contract?

3 MS. GULESSERIAN: Um-hum.

4 MR. LaMOREAUX: We will have half a
5 million gallons a day of tertiary water available
6 at the site, but there is no current way to move
7 that to the Beacon project site.

8 MS. GULESSERIAN: Okay. And how long
9 will it take to construct the pipeline?

10 MR. LaMOREAUX: Estimate would be
11 probably a year, maybe a little bit less. It
12 depends on how the construction contract is put
13 together. How many crews would work on that
14 project at the same time.

15 MS. GULESSERIAN: Okay. So when you get
16 a notice, or -- Beacon, how much will you be able
17 to supply in 12 months then?

18 MR. LaMOREAUX: Well, as far as the
19 District, what it has available in the way of
20 tertiary, that would not change in 12 months. It
21 would still be half a million gallons a day.

22 What would be changing is construction
23 would be well underway on the treatment plan
24 expansion that would be able to take the rest of
25 our 1.3-million-gallons-a-day flow and bring it up

1 to a tertiary level.

2 MS. GULESSERIAN: And has the
3 construction upgrades began on the wastewater
4 treatment plant?

5 MR. LaMOREAUX: Those would begin upon
6 execution of a contract with a customer.

7 MS. GULESSERIAN: Are you going to
8 upgrade your wastewater treatment facility if
9 Beacon does not select Rosamond as its recycled
10 water alternative?

11 MR. LaMOREAUX: Yes, I believe it will
12 happen. There are other interested parties in
13 that water in the desert.

14 MS. GULESSERIAN: Do you have plans to
15 do that anyways?

16 MR. LaMOREAUX: Not without a customer,
17 no.

18 HEARING OFFICER CELLI: Anything
19 further?

20 MS. GULESSERIAN: Assuming you have a
21 letter of intent, how long is it going to take to
22 reach the maximum amount of 1500 acrefeet per
23 year?

24 MR. LaMOREAUX: A proposal that we've
25 received shows a construction period of two years

1 from the notice of intent.

2 MS. GULESSERIAN: And is that limit of
3 what your construction upgrades are going to
4 provide? What is the actual maximum that you can
5 supply once your construction is complete?

6 MR. LaMOREAUX: The tentative plans
7 would be to have a 2 mgd expansion which would
8 provide treatment for all the existing flow and
9 room for future growth.

10 MS. GULESSERIAN: Have you conducted an
11 environmental review for your upgrades to your
12 wastewater treatment system?

13 MR. LaMOREAUX: Which upgrades?

14 MS. GULESSERIAN: For the 1.3 million
15 gallon upgrade.

16 HEARING OFFICER CELLI: Ms. Gulesserian,
17 I just am going to observe that this is something
18 that really doesn't have any relevance to our
19 proceeding whether there has been an environmental
20 reviews of their upgrades. That exceeds our
21 jurisdiction.

22 MS. GULESSERIAN: I'm trying to
23 establish whether they are already proceeding with
24 the 1.3 or are going to be proceeding with 2.0.
25 Based on the evidence in the record, they are

1 moving forward already with the 1.3. And this is
2 the first time I'm hearing that they're going to
3 be at 2.0.

4 So I need the opportunity to --

5 HEARING OFFICER CELLI: But whether
6 they're having an EIR --

7 MS. GULESSERIAN: -- explore that.

8 HEARING OFFICER CELLI: -- is irrelevant
9 to us. Volumes are relevant. Whether they're
10 having an environmental review on it doesn't apply
11 to what we're doing.

12 MS. GULESSERIAN: Well, it is relevant
13 to, I would say it is relevant to the Commission's
14 environmental review process, since the
15 Commission, as lead agency, needs to analyze the
16 whole of the project and can't piecemeal.

17 So depending on --

18 HEARING OFFICER CELLI: It's not part of
19 our project. It is beyond our point of
20 jurisdiction. It's not a part of our project, so
21 it's not relevant.

22 So I'm going to ask that you -- I don't
23 mind you asking him what the volumes are and that
24 sort of thing. But the environmental review isn't
25 relevant after the point of your intention.

1 MS. GULESSERIAN: The FSA has in it that
2 it has the responsibility to analyze those
3 projects that are part of the project, including
4 those that are not within the licensing authority
5 of the Energy Commission.

6 HEARING OFFICER CELLI: I don't
7 understand what you're suggesting.

8 MS. GULESSERIAN: I'm just --

9 HEARING OFFICER CELLI: Perhaps you're
10 talking about some sort of a cumulative analysis
11 or something?

12 MR. BABULA: -- get into the
13 alternatives, which we've already submitted stuff
14 on that.

15 HEARING OFFICER CELLI: Yeah. So,
16 anyway, I'm asking that you move on.

17 MS. GULESSERIAN: Okay. Is the pipeline
18 the critical path item, or is the upgrades to your
19 facility the critical item to providing water to
20 the Beacon Energy Project?

21 MR. LaMOREAUX: To provide water --

22 MS. GULESSERIAN: Which one would be
23 ready first?

24 MR. LaMOREAUX: -- for the operation or
25 for the --

1 MS. GULESSERIAN: The --

2 MR. LaMOREAUX: For the operation?

3 MS. GULESSERIAN: For the Beacon Solar
4 Energy Project. What would you be done first
5 with, the upgrade to 1.3 or the pipeline?

6 MR. LaMOREAUX: Let me clarify what the
7 1.3 number is. That's the current inflow of
8 wastewater to our facilities. It isn't directly
9 related to Beacon.

10 MS. GULESSERIAN: Do you mean --

11 MR. LaMOREAUX: As I've stated earlier,
12 the anticipated construction of the pipeline and
13 facilities would be roughly one year after
14 contract. And the completion of the treatment
15 upgrade would be another year after that. It's a
16 two-year process.

17 MS. GULESSERIAN: Okay, thank you. What
18 was the purpose of your upgrade of your recycled
19 treatment facility?

20 MR. LaMOREAUX: The existing one?

21 MS. GULESSERIAN: Um-hum.

22 MR. LaMOREAUX: Was to provide service
23 within the community of Rosamond in accordance
24 with the planning document that we prepared.

25 MS. GULESSERIAN: And what did that

1 planning document say? What was the purpose?

2 MR. LaMOREAUX: Mostly for urban
3 irrigation, potential for future recharge
4 operations.

5 MS. GULESSERIAN: Thank you. For
6 California City. Once you have a letter of intent
7 to proceed with Beacon, how much water can you
8 supply immediately?

9 MR BEVINS: Trucks or pipes?

10 MS. GULESSERIAN: Either one. Piped --

11 MR BEVINS: It depends on the actual
12 time of the year. Currently my current recycled
13 water demand in August basically uses most of it.
14 If, however, they wanted to start construction in
15 January, they could truck to their heart's content
16 probably.

17 I'm saying maybe 500 acrefeet if it was
18 trucked.

19 MS. GULESSERIAN: Okay, and how much
20 could you supply in six months?

21 MR BEVINS: Again, depending on the
22 timeframe it would still be the same because our
23 plan is to be able to deliver water for the first,
24 I believe, it's 18 months, which is what we
25 submitted I think in December, was an 18-month

1 plan. I don't have it in front of me, so I --

2 MS. GULESSERIAN: Okay, so there's 500
3 acrefeet available immediately and --

4 MR. BABULA: Are you talking for
5 operation?

6 MS. GULESSERIAN: I'm talking about --

7 MR. BABULA: Because the --

8 MS. GULESSERIAN: -- when they have a
9 letter of intent to proceed with getting water
10 from California City, how long is it going to take
11 them to provide water to the Beacon Project.

12 Not asking for what purpose.

13 MR. BABULA: Okay, I mean, because it's
14 laid out in conditions of certification soil and
15 water-1. It lays out how much. It staggers, the
16 first year, second year, third year. So it's
17 already laid out of what the applicant will be
18 receiving.

19 MS. GULESSERIAN: I understand what the
20 condition of certification says. I want to know
21 what California City is able to provide.

22 MR. BEVINS: What we provided in the
23 certification. That is our plan provision.
24 There are some minor changes. I mean a small
25 amount like 500 acrefeet really isn't significant,

1 I don't think, in any of the issues.

2 MS. GULESSERIAN: How long would it take
3 to reach the maximum amount that you're going to
4 supply?

5 MR BEVINS: May I ask you just one
6 question to make sure, because Eric just brought
7 up a suggestion. I'm thinking broad scale; I'm
8 not thinking on a daily basis.

9 MS. GULESSERIAN: I was just going to
10 ask you. A point made here is what's the rate?
11 You can deliver 500 acrefeet per how often?

12 MR BEVINS: Well, that would be probably
13 in a six-month period of time over the winter. If
14 that were the timing, the way things worked out.

15 Our current discharge permit would allow
16 that, I believe.

17 MS. GULESSERIAN: Thank you. And how
18 long would it take to reach the maximum amount
19 that you would be able to provide?

20 MR BEVINS: I believe it's five years.

21 MS. GULESSERIAN: How long is
22 construction of your upgrades to your facility
23 going to take?

24 MR BEVINS: My wastewater plant?

25 MS. GULESSERIAN: Um-hum.

1 MR BEVINS: Or to the piping?

2 MS. GULESSERIAN: To the wastewater
3 plant.

4 MR BEVINS: The wastewater plant will
5 take us about 18 months.

6 MS. GULESSERIAN: Eighteen months. Will
7 you be doing the upgrades to the plant
8 concurrently with the construction of the
9 pipeline?

10 MR BEVINS: I would think that that
11 could happen.

12 MS. GULESSERIAN: So within 18 month the
13 constructions to the treatment plant and the
14 pipeline could be done?

15 MR BEVINS: Right. Well, remember,
16 there's actually two pipelines. You got the sewer
17 system and the pipeline. The pipeline, you asked
18 earlier about the critical path element. The
19 pipeline is not the critical path element. The
20 critical path element here is, the number one is
21 the upgrade of the wastewater treatment plant,
22 followed by the expansion of the sewer system.
23 Those are the two critical path elements.

24 MS. GULESSERIAN: Thank you for
25 clarifying that. And how long will that take, the

1 expansion of the sewer system?

2 MR BEVINS: That's the part that takes
3 roughly three years.

4 MS. GULESSERIAN: Okay.

5 MR BEVINS: Actually, we have it broken
6 down into five phases, which is why you come up
7 with five years total plan. And we would start
8 that simultaneous with everything else.

9 HEARING OFFICER CELLI: It's now 1:25;
10 I'm going to ask --

11 MS. GULESSERIAN: And how long will it
12 -- sorry.

13 HEARING OFFICER CELLI: -- that we move
14 on.

15 MS. GULESSERIAN: Okay. Just another
16 question, one more question. Is it correct that
17 how long will it take to construct the delivery
18 pipeline to Beacon?

19 MR BEVINS: That would happen, I would
20 think, relatively soon. I can't imagine that
21 being longer than a year. It's the least of the
22 elements.

23 MS. GULESSERIAN: Okay. Are you going
24 to proceed with -- you said you're going to
25 proceed with the upgrades whether or not Beacon --

1 upgrades consistent with our prior dialogue with
2 Lahontan. And we already have an RFP out right
3 now soliciting the upgrade feasibility so we can
4 begin the processes for that.

5 MS. GULESSERIAN: Okay, and if Beacon
6 does not use that water what will be the purpose
7 of that, what will you use that water for?

8 MR BEVINS: I really want to tell you
9 I'm going to pour it on the ground. We're going
10 to use it for irrigation inside the city if it's
11 not used by Beacon.

12 MS. GULESSERIAN: Do you have a date for
13 the California City collection system construction
14 year?

15 MR BEVINS: That's dependent --

16 MS. GULESSERIAN: Start date?

17 MR BEVINS: That's totally dependent on
18 the whole process and the signing of an agreement
19 with Beacon.

20 MS. GULESSERIAN: Okay, once the
21 applicant decides how long will it take for you to
22 start construction?

23 MR BEVINS: It will probably take us
24 about -- by construction are you meaning shovel in
25 the ground or you're talking about the engineering

1 process and starting to move forward with that?

2 MS. GULESSERIAN: The process that you
3 previously described would take.

4 MR BEVINS: The process we previously
5 described would take about five years -- will take
6 five years to complete. It will probably take us
7 about four months to start.

8 HEARING OFFICER CELLI: Is that --

9 MS. GULESSERIAN: Thank you very much.
10 I have no further questions.

11 HEARING OFFICER CELLI: Thank you.
12 Applicant, any questions of these witnesses?

13 MS. LUCKHARDT: No further questions.

14 HEARING OFFICER CELLI: Redirect?

15 MR. BABULA: Nothing.

16 HEARING OFFICER CELLI: Thank you.

17 Thank you both for your testimony today.

18 It's now 1:30. We have about five
19 minutes to go before we get off of water. What
20 else do we need to do in order to complete the
21 record in water?

22 MS. LUCKHARDT: We're still waiting for
23 Duane McCloud, who is en route.

24 HEARING OFFICER CELLI: Marlee. Have
25 you heard from him? Do you know where he is?

1 MS. LUCKHARDT: I was just asking the --
2 we just tried to call him and he's not answering,
3 so he must be in a cell point where he's not
4 receiving.

5 HEARING OFFICER CELLI: Is he in a plane
6 right now, or is he on the road or something?

7 MS. LUCKHARDT: No, he's on the road.

8 HEARING OFFICER CELLI: Okay.

9 MS. LUCKHARDT: We know he's landed;
10 we've talked to him. He's en route.

11 HEARING OFFICER CELLI: Well, then, Ms.
12 Gulesserian, your only -- you have no further
13 witnesses at this point. You just wanted to --
14 about five minutes of -- well, what about staff on
15 water?

16 MR. BABULA: I'm done with water.

17 HEARING OFFICER CELLI: You're done with
18 water, okay. Now, this might be our opportunity,
19 you wanted to insert TSE, transmission system
20 engineering --

21 MS. LUCKHARDT: We need Duane McCloud to
22 do that.

23 HEARING OFFICER CELLI: Oh, that's
24 right. Well, what is it that -- what are we going
25 to do with the transmission system engineering?

1 You're just calling Duane McCloud, or do you have
2 your own witness on that?

3 MS. GULESSERIAN: I have my witness to
4 call.

5 HEARING OFFICER CELLI: And who would
6 that be?

7 MS. GULESSERIAN: Mr. Marcus is ready
8 and available. And I have --

9 MS. LUCKHARDT: Did we want to finish
10 visual?

11 MR. BABULA: All right.

12 HEARING OFFICER CELLI: What happened
13 with visual?

14 MR. BABULA: Mark's here. We could
15 do --

16 HEARING OFFICER CELLI: Let's finish
17 visual.

18 (Laughter.)

19 HEARING OFFICER CELLI: Welcome. Mr.
20 Hamblin, if you could come on over, stand up,
21 raise your hand and be sworn.
22 Whereupon,

23 MARK HAMBLIN
24 was called as a witness herein, and after first
25 having been duly sworn, was examined and testified

1 as follows:

2 HEARING OFFICER CELLI: Please state and
3 spell your name for the record.

4 MR. HAMBLIN: Mark, M-a-r-k, Hamblin,
5 H-a-m-b-l-i-n.

6 HEARING OFFICER CELLI: Thank you.
7 Staff, your witness. This is on the question of
8 visual, ladies and gentlemen. You'll recall we
9 had a nice little, a little slide show showing a
10 little trash here and there along the trails,
11 along the road.

12 Now we're going to talk about the visual
13 impacts. And this will finish up the whole topic,
14 will it not? Yes, okay.

15 I appreciate the parties' willingness to
16 be flexible.

17 (Pause.)

18 HEARING OFFICER CELLI: Are we ready to
19 go on visual?

20 MR. SPEAKER: Two seconds.

21 MR. BABULA: Jane, do you happen to have
22 the PowerPoint, so we could put up the one --

23 MS. LUCKHARDT: Mine?

24 MR. HAMBLIN: Yeah, so I can figure out
25 what went on.

1 MS. LUCKHARDT: My witness and AV
2 operator over there.

3 HEARING OFFICER CELLI: Now, with regard
4 to visual, at the prehearing conference we did
5 talk about need to put in any evidence for
6 override if that's the direction the applicant
7 wants to go in.

8 MS. LUCKHARDT: That came in under the
9 executive summary testimony sponsored by Kenneth
10 Stein.

11 HEARING OFFICER CELLI: Okay.

12 MS. LUCKHARDT: So we had originally
13 designated it as executive summary testimony
14 because it was more of an overview of the whole
15 project, as opposed to focus just on visual.

16 HEARING OFFICER CELLI: It probably
17 would be wise to get you to state on the record
18 what that exhibit is so when it comes time --

19 MS. LUCKHARDT: And that exhibit is 322.

20 HEARING OFFICER CELLI: 322, thank you
21 very much.

22 MS. LUCKHARDT: It's the rebuttal
23 testimony of Kenneth Stein on overriding
24 considerations.

25 HEARING OFFICER CELLI: And that goes to

1 override; thank you very much.

2 MR. BABULA: We also have put in a
3 declaration from Terry O'Brien regarding --

4 HEARING OFFICER CELLI: We have that.
5 That was from staff --

6 MR. BABULA: Right.

7 MR. HAMBLIN: Okay, let me just kind of
8 lead off here. On both those KOPs there are two
9 questions on --

10 MS. LUCKHARDT: Should he be sworn in?

11 HEARING OFFICER CELLI: He has been
12 sworn but there's no question pending.

13 (Laughter.)

14 MR. BABULA: Can you put up the KOP-6,
15 which was --

16 MR. FLACK: As soon as I know which
17 one's KOP-6.

18 MS. LUCKHARDT: Can you --

19 MR. FLACK: I'll do my best --

20 HEARING OFFICER CELLI: I think it's
21 slide 23.

22 MR. FLACK: I think you're right.

23 HEARING OFFICER CELLI: And if we can
24 have this be an examination rather than a
25 narrative.

1 MR. BABULA: All right, --

2 MR. FLACK: Is that the one you guys
3 want?

4 MR. HAMBLIN: Go back to the one
5 previous. We'll go with the simulation.

6 MR. FLACK: Do you want that one first?

7 MR. HAMBLIN: Yeah, let's go with that
8 one.

9 MR. BABULA: All right, let me start.
10 Okay, we are ready.

11 HEARING OFFICER CELLI: We're on the
12 record. Let's move on to visual here.

13 MR. BABULA: Okay, thank you. This is
14 visual resources.

15 DIRECT EXAMINATION

16 BY MR. BABULA:

17 Q Have you had a chance to review the
18 applicant's rebuttal testimony and testimony
19 regarding visual resources?

20 A I have.

21 Q Okay. And I know you weren't present
22 here earlier when they went, but you've seen the
23 testimony. Do you have any response to the
24 applicant's, their position that the visual
25 impacts are not significant and that they're not

1 mitigable?

2 A Let me explain. The physical
3 environment that was described, yes, that could be
4 -- I'm not going to dispute that.

5 But there's a context in which staff
6 works within, and this is visual resources diagram
7 1 in the FSA. We have a whole listing of
8 categories that we go through.

9 Now, to merely see certain trash or
10 debris doesn't, you know, we're looking at a
11 bigger picture issue, such as items like visual
12 quality, viewer concern, visibility, number of
13 viewers, duration of view. Then we get into
14 contrast, dominance, view blockage.

15 It's not just limited to one particular,
16 I mean a focus shot. I'm not going to dispute
17 that it's not out there, that there is debris. It
18 is an OHV area. There's also some other debris,
19 I've also identified the fact that the ranch is a
20 deteriorating facility, as well.

21 But one of the concerns that came --
22 that I've had to look at in the wake of all of
23 these new solar facilities, and this is new stuff
24 that we're dealing with and having to contemplate,
25 is when I come under the category of contrast.

1 Now in the back of the FSA you'll see an
2 explanation of the various terms that I've used,
3 that's the final staff assessment, this document.
4 And we've worked with this over a number of years
5 to establish these definitions. Of course,
6 largely they were based on natural gas facilities,
7 and now we're introducing having to see new things
8 introduced over the solar facilities.

9 And one of them under contrast is
10 brightness. Now, when I'm talking about
11 brightness to the area, and this is why I've
12 identified under -- I highlighted the parabolic
13 trough. I made the statement, the glittering from
14 the parabolic troughs would be seen at various
15 locations. The degree of contrast introduced by
16 the amount of light or brightness that is given
17 off from the surface of the parabolic trough would
18 accentuate the contrast of the surrounding
19 landscape.

20 This is a new area, frankly, is
21 increased brightness to a specific area. And I'm
22 giving it a whirlwind of a name calling it ambient
23 brightness intensity.

24 And what I would look -- kind of reckon
25 it to is I was with my -- babysitting my friend's

1 daughter a number of months ago. And the light
2 bulb in her bedroom went out. There was a 20-watt
3 lightbulb in there. And this is during the
4 daytime when we're reading, when I was reading to
5 her.

6 We went in, could not find another 20-
7 watt bulb, but we found a 120-watt bulb. And so I
8 went in and replaced the 20-watt bulb with the
9 120-watt bulb in the bedroom. And we turned it on
10 and she says, oh, my god, it's too bright.

11 So I started thinking about it. The
12 analogy would be think of the Fremont Valley as
13 being the bedroom. Think of the proposed power
14 plant being the 120-watt bulb that's currently
15 going in there. And that increase in intensity of
16 light, a brightness, I want to say not light, but
17 brightness.

18 Now, is there an impact there? Well,
19 under CEQA, yeah, there's some type of impact. Is
20 it significant? I don't know. We don't have
21 studies that can tell me what the ambient light is
22 for an area that might make it significant, non-
23 significant, it's an unknown to me at this point.

24 So, and there's other stuff coming on
25 solar fields, folks. I'm getting deluged with it

1 every day.

2 But anyway, so this is an unknown that I
3 had to kind of think about when I was considering
4 those two KOPs. What is this introduction? Is
5 this so bright? It is a physical change, but is
6 it so bright that it's a significant impact? At
7 least from the context of contrast under those
8 seven or eight categories.

9 Q So your professional opinion is based on
10 what, the state of what we know now and the
11 information is that it is a significant impact on
12 contrast?

13 A I have to say it's a significant impact
14 because there's no information to dismiss it, that
15 there may be an impact. And CEQA requires us to
16 err on the side of being most environmentally
17 protective, conservative.

18 HEARING OFFICER CELLI: Anything
19 further?

20 MR. BABULA: Okay, I am done.

21 HEARING OFFICER CELLI: Applicant
22 questions, please.

23 CROSS-EXAMINATION

24 BY MS. LUCKHARDT:

25 Q I've just got to ask, did you hike to

1 KOP-6, I think it is?

2 A No, I didn't. Unfortunately, I've got
3 one hip that's been replaced, and the other one's
4 going pretty quick. So my technical climbing,
5 even simple hiking -- and this is only a class 1
6 hike -- at the time limited, well, limits me from
7 how far up I can go.

8 Q Is a class 1 hike a fairly simple hike?

9 A Very simple.

10 Q Is that the hike that is described to go
11 to the top of Chuckwalla Mountain?

12 A I did describe the -- yeah, yeah,
13 actually the first one. These are based on some
14 of the trails from the -- actually, the map that's
15 in the FSA is based on the BLM's map, which is
16 their area of critical environmental concern trail
17 path.

18 It would be -- it's actually only a
19 portion of it. We didn't put the entire map in.

20 Q Do you think it could be the case that
21 the trail that you're describing there is the
22 trail to Chuckwalla Mountain, and not the trail to
23 KOP-6?

24 A That could be the case.

25 Q The figures that, looking at some of the

1 figures in the FSA, you included a figure, I think
2 it's number 23, that shows, I believe it's
3 pictures from Chuckwalla Mountain?

4 A Correct. I believe those are the ones
5 from the Sierra Club?

6 Q Correct. And can you see Cone Lake in
7 one of those? You probably need to look at the
8 FSA.

9 HEARING OFFICER CELLI: And if you have
10 the picture, you might want to walk over and show
11 it to him, so he'll have the --

12 MS. LUCKHARDT: It's figure 23, the east
13 view -- does somebody have it in color? Okay,
14 Sara has it in color in case.

15 THE WITNESS: I have it, yeah.

16 HEARING OFFICER CELLI: Do you remember
17 what the question was, Mr. Hamblin?

18 THE WITNESS: Can I see Calm Lake.

19 MR. SPEAKER: Cone Lake.

20 THE WITNESS: Or Cone Lake, yes, I can.

21 BY MS. LUCKHARDT:

22 Q And isn't the color of Cone Lake similar
23 to the color from the solar array?

24 A In the --

25 Q In vis-

1 A In vis-, it's a simulation.

2 Q The simulation.

3 A Okay, as in --

4 Q From say KOP-6?

5 A We can go back to 6 --

6 MR. SPEAKER: Which one is --

7 THE WITNESS: Let's go KOP-6.

8 MR. BABULA: 23?

9 (Pause.)

10 THE WITNESS: Okay, that's the existing

11 that was taken.

12 MR. FLACK: Do you want the next one?

13 MS. LUCKHARDT: Yeah. There we go.

14 THE WITNESS: And that is at some time

15 during the day.

16 BY MS. LUCKHARDT:

17 Q Correct. And isn't it the case that the

18 time at which you're going to see that particular

19 reflection will be limited?

20 A It will shift during the day, as we've

21 indicated. Actually, even as your consultant

22 indicated, that there will be a substantial

23 contrast at certain points during the day, and

24 then it will diminish and change as the movement

25 of the sun occurs, and the tracking occurs.

1 Q And it's correct that the backs of this
2 particular array field will be painted a sand
3 color, that's correct?

4 A That's, from what I understand, and that
5 follows what was done also at Harper Lake.

6 Q When you were doing your analysis in the
7 FSA and you were evaluating KOP-6, you also stated
8 that the view includes manmade modifications,
9 didn't you?

10 A Correct.

11 Q And those would include the Honda Test
12 Track, --

13 A The existing deteriorating structures,
14 the ranch; pole lines; the highway.

15 Q And don't these features diminish at
16 least the natural perception of that view?

17 A Those would get considered under -- you
18 go back to diagram 1, under the visual
19 sensitivity, we would take those into
20 consideration, yes.

21 Now, what we're not, or at least the
22 framing of your question is not taking in the
23 bottom part proposed condition. The proposed
24 condition introduces the lighting issue, the
25 brightness issue that I mentioned.

1 That has to be equated along with the
2 proposed structures that you're --

3 Q And did you take into account the
4 existing contrast that's out there now for this
5 site?

6 A Yes. Yes, thanks to the previous
7 picture, and the fact that I was also out there.
8 I just didn't make it up -- I made it to all the
9 other KOPs, I just didn't climb.

10 If we notice the different texture,
11 even, the difference in the soil change, even the
12 background, those were considered.

13 (Pause.)

14 BY MS. LUCKHARDT:

15 Q Do you consider any contrast to be an
16 adverse impact?

17 A Any, wow, any contrast. Well, let's go
18 back to the back of the document where I explain
19 what contrast is. And I'm not going to say any
20 because there's also the ability in which if
21 structures are more uniform to the -- well, here,
22 let's go back.

23 HEARING OFFICER CELLI: How many more
24 questions do you have, Ms. Luckhardt?

25 MS. LUCKHARDT: Just a couple more.

1 HEARING OFFICER CELLI: Okay. The clock
2 is running --

3 MR. BABULA: He's actually looking at
4 the FSA.

5 (Pause.)

6 HEARING OFFICER CELLI: So the question
7 has to do with contrast, what is contrast --

8 THE WITNESS: Okay.

9 HEARING OFFICER CELLI: -- any contrast
10 constitutes a significant impact.

11 THE WITNESS: Well, contrast concerns
12 the degree to which the proposed project's visual
13 characteristics or elements of form, line, color
14 and texture differ from form, line, color and
15 texture existing in the landscape.

16 So if there is a similarity between the
17 design of the project with the form, line, texture
18 within the natural environment, it would be
19 limited contrast.

20 So I wouldn't be -- there would be some
21 contrast, but I wouldn't say it would be a
22 significant -- I couldn't just rule that it's
23 automatically an impact. A substantial impact.
24 Or substantial degrading, let me say it that way.

25 HEARING OFFICER CELLI: You might want

1 to move those metal --

2 THE WITNESS: Clips, yes.

3 HEARING OFFICER CELLI: So, I'm sorry,
4 your answer got interrupted. I'm interested in
5 that answer. You said that there's low contrast
6 and there's no impact. And if there's high --

7 THE WITNESS: What you're -- all right,
8 what you're looking at is the ability of the new
9 elements being introduced to be absorbed within
10 the landscape.

11 Now, if you have extensive introduction
12 of forms, lines, colors and textures that are not
13 in, let's say, rhythm or consistent with the
14 physical condition, then you're going to have a
15 significant contrast.

16 HEARING OFFICER CELLI: Now, is --

17 THE WITNESS: So, now, what you'd like
18 to see is maybe facilities designed that flow as
19 best as they can with the existing physical
20 condition.

21 HEARING OFFICER CELLI: So, if I may,
22 then I'll let the parties cross on this if they
23 want to, but instead of mirrors being introduced
24 there was a lake introduced there.

25 A lake presumably, has a similar impact

1 to these mirrors in that it's going to reflect
2 sunlight, it's going to reflect the sky, it's
3 going to be blue density, mostly yellowish --

4 THE WITNESS: Correct.

5 HEARING OFFICER CELLI: -- background.

6 THE WITNESS: A change in the existing
7 physical condition.

8 HEARING OFFICER CELLI: Right.

9 THE WITNESS: Introduced by something
10 other than structure.

11 HEARING OFFICER CELLI: And it's an
12 impact -- it's a significant impact under those
13 criteria. The question is it a significant
14 adverse impact.

15 My question is does that constitute a
16 significant adverse impact.

17 THE WITNESS: Well, the question could
18 be contingent on size. We have a two-square-mile
19 industrial facility. Is that a significant impact
20 for the Fremont Valley of light reflected,
21 brightness?

22 HEARING OFFICER CELLI: So size is a
23 factor?

24 THE WITNESS: Size could be a factor.

25 HEARING OFFICER CELLI: But I'm --

1 THE WITNESS: Now, but let me go back
2 also and say what I was saying, too. We have this
3 increased brightness occurring. When does that
4 become a significant impact? And I don't have
5 data on that.

6 HEARING OFFICER CELLI: Okay. I mean it
7 seems to me that when you're driving down the 14
8 and you get blasted, you can't see because the sun
9 is now in your face --

10 THE WITNESS: True.

11 HEARING OFFICER CELLI: -- like a
12 mirror, that would be significant. And that would
13 be adverse.

14 THE WITNESS: True.

15 HEARING OFFICER CELLI: Okay.

16 THE WITNESS: And I've been in a plane
17 flying over a couple of lakes where I've seen the
18 light come up at me.

19 HEARING OFFICER CELLI: So this is
20 admittedly kind of a new area.

21 THE WITNESS: Yes.

22 HEARING OFFICER CELLI: And you had sort
23 of indicated earlier in your testimony, you said
24 something to the effect of you can't state whether
25 this is a significant impact, but you have no

1 evidence to dispute that brightness, the
2 brightness factor is significant.

3 THE WITNESS: I don't have a scientific
4 level that says, okay, we're now 50 percent
5 increase in the current area where this project is
6 going to be an increase in brightness. Therefore,
7 it's an impact.

8 Now I'm going to conclude there is an
9 effect that's occurring. That's why I'm here
10 today to say that.

11 Now, if somebody were to ask well, at
12 what point, what percentage, what candle power,
13 what lumen, I can't tell you at this time.

14 Now, Madam Chair, you'll be seeing me
15 probably later in the summer, because we are
16 looking at doing some in-depth studying on this.
17 Just a footnote.

18 HEARING OFFICER CELLI: But when it
19 comes to -- this Committee's going to have to
20 resolve this problem of unmitigable impact based
21 upon this KOP --

22 THE WITNESS: Right.

23 HEARING OFFICER CELLI: And no pun
24 intended, but any light you can shed --

25 (Laughter.)

1 HEARING OFFICER CELLI: -- would be
2 useful.

3 THE WITNESS: Well, this goes back to a
4 meeting which Madam Chair was present for where
5 there was a gentleman in the back of the room that
6 said something about a shot in the dark. I was
7 the guy that said that. We're taking some shots
8 in the dark within our professional expertise.
9 And this was one of those thought processes that I
10 was undergoing, and continue to undergo during the
11 course of this.

12 We would have an effect -- we have an
13 effect occurring. We have a change in the
14 existing condition. I have to err on the side of
15 advising you that I think it's a significant
16 impact because I don't have any information that
17 will allow me to say it's not an impact.

18 HEARING OFFICER CELLI: Okay.

19 THE WITNESS: I can't just sit there,
20 and then knowing that I need to err on the side of
21 being more environmentally protective. Now the
22 analogy you even just mentioned, we start getting
23 into another category, which is the glare, the
24 traffic safety issue. And that's another kind of
25 subset that we'd be dealing with at some point, as

1 well.

2 Retina damage. Do we go to that
3 extreme. Do we go to a flash blindness situation.
4 Again, these are all areas which we're looking at
5 at our end, at the technical staff's end.

6 But we don't have anything definitive to
7 give you at this time.

8 HEARING OFFICER CELLI: Okay, fair
9 enough. I'll give it back to you, Ms. Luckhardt.

10 BY MS. LUCKHARDT:

11 Q Mr. Hamblin, based on your analysis --

12 MS. LUCKHARDT: Am I cross-examining the
13 Committee?

14 HEARING OFFICER CELLI: This is cross.

15 (Laughter.)

16 HEARING OFFICER CELLI: Mr. Hamblin,
17 you're being asked a question on cross.

18 BY MS. LUCKHARDT:

19 Q Mr. Hamblin, based on what you just
20 discussed, would you find the existing condition,
21 which clearly delineates the previous agricultural
22 activity to be a significant impact?

23 A Well, say that again? I'm not --

24 Q Would you find the existing condition,
25 and maybe go to the previous slide --

1 A Actually the impact isn't based on the
2 significance. The change to the existing
3 condition.

4 Q Hypothetically, if it was --

5 A Pristine desert?

6 Q -- pristine desert, and then you looked
7 at the existing condition, would that be
8 potentially a significant adverse impact?

9 A It would be a concern, yes. I would say
10 that there's definitely a physical effect that has
11 happened. From pristine, if we're looking at like
12 a wilderness classification by the U.S. Fish and
13 Wildlife Service? Wilderness scenic, something in
14 those areas, to going to, well, going to this,
15 yeah, there's an impact.

16 Q And then isn't it the overall geometric
17 shape of the project similar to what's out there
18 now?

19 A Well, okay. You're introducing
20 structures, as well, that aren't out there.
21 Administration building, mirrors that aren't out
22 there. You know, this is a roadway system. I
23 mean I would say some, at least at this angle
24 there's some form that's added to it. But I think
25 I say that even in the staff report, there's a

1 comment that I made, that some people may think
2 this is visually pleasing.

3 MS. LUCKHARDT: Okay. I have nothing
4 further.

5 HEARING OFFICER CELLI: Anything
6 further? Ms. Gulesserian, I know that you didn't
7 have a dog in that fight, but did you want to ask
8 any questions?

9 MS. GULESSERIAN: No, we have no
10 questions, thank you.

11 HEARING OFFICER CELLI: Thank you.
12 Redirect, Mr. Babula?

13 (Pause.)

14 MR. BABULA: Just one clarifying
15 question to redirect him on.

16 REDIRECT EXAMINATION

17 BY MR. BABULA:

18 Q Was there -- besides the brightness
19 component, was there another component of KOP-6
20 that you had put in your testimony that you'd like
21 to address?

22 A Sure. We focused a lot of this
23 discussion on brightness, but again, it's
24 structures that are also being introduced into an
25 area that doesn't currently have them. And,

1 again, at this type and design, you know, two
2 square miles of them.

3 So I do want to add, you know, I mean my
4 future concern also becomes this brightness issue,
5 because I'm looking technically, but there's also
6 still, and I've already discussed the structure
7 issue. So I won't belabor the point.

8 HEARING OFFICER CELLI: Chairman
9 Douglas, you had a question.

10 PRESIDING MEMBER DOUGLAS: Mr. Hamblin,
11 a brief question. There doesn't seem to be any
12 dispute that there will be a change to the
13 physical environment, and that it will be visible
14 certainly under certain circumstances maybe more
15 than others.

16 I wanted to ask you directly what it is
17 that makes it adverse? Is the brightness, is it
18 something else?

19 THE WITNESS: Well, at this elevated
20 angle I'm going to say brightness. If you --
21 also, again, it's structures introduced to an area
22 that -- significant types of structures for a long
23 distance.

24 If this had been a natural-gas-fired
25 facility, my view would be a lot different because

1 of the smaller footprint. But I'm also
2 considering the fact that we've got a large area
3 of mirrors, administration building, et cetera,
4 spread out over a large, well, field of view.

5 PRESIDING MEMBER DOUGLAS: So you're
6 looking at the size of the facility, you're
7 looking at brightness, and you're looking at
8 structures --

9 THE WITNESS: I'm looking at all of the
10 items that were in diagram 1.

11 PRESIDING MEMBER DOUGLAS: Now, this is,
12 as it's been noted to some degree, an issue of
13 first impression here at the Commission. We don't
14 have a lot of cases that have been decided on the
15 visual impacts of large solar facilities.

16 THE WITNESS: I'm well aware of that.

17 PRESIDING MEMBER DOUGLAS: We're moving
18 towards having a number, hopefully. You mentioned
19 that in your mind there's no set or understood
20 criteria for assessing the significance of the
21 visual impact. And I want to ask you --

22 THE WITNESS: I did say that.

23 PRESIDING MEMBER DOUGLAS: -- to break
24 that down a little bit. There's brightness,
25 there's structures, there's size of the facility.

1 THE WITNESS: Okay, my question was
2 based, at that point, on the brightness issue.
3 This is something that I haven't been able, again,
4 to grab my hands around. And we, upstairs on the
5 fourth floor, have been talking about and we're
6 seeing some of these issues, also, with the power
7 towers.

8 All I can say is we're working through
9 it. We have an illumination engineer, an
10 illumination specialist on board. He has offered
11 some tremendous advice and counsel to us on this
12 matter.

13 There is just this point that, at least
14 when this report was done back in September, I
15 know more now than what I did then. And I kind of
16 had an idea of where we maybe go, some idea of
17 where we may be going.

18 But, yes, the component of structures is
19 also. I just didn't dwell on the structures as
20 much as I did on the brightness.

21 PRESIDING MEMBER DOUGLAS: And in terms
22 of the brightness, for our benefit and the benefit
23 of any members of the public who may be here, can
24 you describe it or compare it to any reference
25 point?

1 THE WITNESS: Reference point --

2 PRESIDING MEMBER DOUGLAS: That might
3 be --

4 THE WITNESS: Like incident ray or
5 refractive ray or escaped ray?

6 PRESIDING MEMBER DOUGLAS: Of high
7 bright.

8 THE WITNESS: How bright. No, actually
9 I don't have anything. See, that's part of going
10 from the 20-watt bulb to the 120, it was purely an
11 analogy. I don't know if that is actually the
12 example that I would -- that's an analogy. I
13 don't know if that's the scientific percentage of
14 increase that would take place.

15 PRESIDING MEMBER DOUGLAS: All right,
16 thank you.

17 HEARING OFFICER CELLI: Okay, I think
18 that -- are we finished with visual then?

19 MS. LUCKHARDT: Well, I'm just -- if I
20 could just, based on the discussion that you just
21 had about what other factors besides brightness
22 were taken into account for these KOPs.

23 BY MS. LUCKHARDT:

24 Q It was my understanding that you created
25 an estimate of the number of hikers that you

1 thought might go up that trail?

2 A Correct.

3 Q Was that based on any numbers that you
4 could get from BLM or from anyone else?

5 A BLM didn't have a count. They made an
6 assumption. So I went with a number that -- that
7 was purely a number that I put forth. Now the
8 number of hikers that I used was also considered
9 low by the diagram 7 -- diagram 1 categories.

10 So, yeah, the number wasn't so much.
11 Now granted, hikers tend to be more passive
12 recreation. They tend to be more observant.
13 Increased brightness, the structures, the view may
14 impact them much more than if you went down the
15 mountain to the OHV area, the offroad riders tend
16 to be more active recreationists. And they not
17 care; they're going to be worried about what's in
18 front of them, jumping, that type of activity. Or
19 worrying about the hole in front of them which I
20 missed when I was going in.

21 MS. LUCKHARDT: I have nothing further.

22 HEARING OFFICER CELLI: Anything
23 further, staff?

24 MR. BABULA: Nothing further.

25 HEARING OFFICER CELLI: Thank you. With

1 that, we finish visual then.

2 Let me see, now we were --

3 MS. LUCKHARDT: Do you want to complete
4 water?

5 HEARING OFFICER CELLI: Yes. We were in
6 the midst of water --

7 MS. LUCKHARDT: We can bring up Mr.
8 McCloud.

9 HEARING OFFICER CELLI: Do you have him
10 here? Oh, good.

11 MS. LUCKHARDT: He's here.

12 HEARING OFFICER CELLI: So where are we
13 now? Let me see.

14 MS. LUCKHARDT: He needs to be sworn.
15 And then actually I'm concerned about us getting
16 to biology because we do not have all of the folks
17 here any longer than today.

18 HEARING OFFICER CELLI: Well, we're
19 going to get to it. And we will finish today, so,
20 with that, let's have Mr. McCloud sworn.

21 MS. GULESSERIAN: I'm going to make a
22 suggestion that since both Mr. McCloud and David
23 are transmission system engineer, we could get
24 them done in like ten minutes, five minutes.

25 HEARING OFFICER CELLI: I think that's a

1 fine suggestion. Let's get Mr. McCloud sworn.

2 Whereupon,

3 DUANE McCLOUD

4 was called as a witness herein, and after first
5 having been duly sworn, was examined and testified
6 as follows:

7 MS. LUCKHARDT: Yeah, I'd like just to
8 swear in Mr. Flack just in case.

9 MS. GULESSERIAN: Actually narrowed down
10 my questions, so it shouldn't take too long.

11 MS. LUCKHARDT: Okay.

12 Whereupon,

13 MICHAEL FLACK

14 was called as a witness herein, and after first
15 having been duly sworn, was examined and testified
16 as follows:

17 HEARING OFFICER CELLI: Please state
18 your name and spell it for the record. And if
19 we're going to have a panel, then I need both of
20 them to state and spell their names.

21 MR. McCLOUD: Duane McCloud, D-u-a-n-e
22 M-c-C-l-o-u-d.

23 MR. BUSA: Depending on the questions,
24 this is Scott Busa, B-u-s-a.

25 //

1 Whereupon,

2 SCOTT BUSA

3 was recalled as a witness herein, and having been
4 previously duly sworn, was examined and testified
5 as follows:

6 MR. FLACK: Michael Flack, F-l-a-c-k.

7 CROSS-EXAMINATION

8 BY MS. GULESSERIAN:

9 Q Duane, I'll ask you since you came all
10 this way. But apologies, you didn't have the
11 benefit of hearing the earlier testimony of
12 Rosamond.

13 We heard this morning that, or this
14 afternoon, that the Rosamond Community Services
15 District, from that representative, that it was
16 going to take two years to upgrade the plant and
17 build the pipeline from the time that they have an
18 agreement with Beacon.

19 Is it correct that construction of the
20 Beacon project will take approximately 25 months?

21 MR. McCLOUD: That is correct.

22 MS. GULESSERIAN: So, are you familiar
23 with soil and water condition 1.

24 HEARING OFFICER CELLI: And I'm going to
25 ask each of your witnesses to state who they are

1 before they speak so the record's clear which
2 witness is speaking.

3 MR. McCLOUD: Yes. This is McCloud.
4 And I'm familiar with the condition, although I
5 may need to refresh specific parts --

6 MS. GULESSERIAN: Oh, sure, I just have
7 one question about it. It's that Rosamond will
8 take two years to construct the plant and
9 pipeline, and it's going to take two years for the
10 plant, the Beacon plant, to be constructed.

11 So in order to comply with condition 1
12 don't you have to make a decision on whether to
13 use Rosamond recycled water within one to two
14 months after the start of construction?

15 MR. McCLOUD: That would be reasonable,
16 yes. That would be one of the first decisions
17 we'd have to make.

18 MS. GULESSERIAN: Okay, thank you.

19 HEARING OFFICER CELLI: Any further
20 questioning from CURE?

21 MS. GULESSERIAN: We have no further
22 questions.

23 HEARING OFFICER CELLI: Staff?

24 MR. BABULA: Nothing.

25 HEARING OFFICER CELLI: Applicant?

1 MS. LUCKHARDT: Nothing.

2 HEARING OFFICER CELLI: Thank you. Does
3 this mean that we are finished with water -- soils
4 and water and hydrology at this time? Applicant?

5 MS. LUCKHARDT: I believe so.

6 HEARING OFFICER CELLI: CURE, nothing
7 further on soils, water and hydrology?

8 MS. GULESSERIAN: Nothing further.

9 HEARING OFFICER CELLI: Staff?

10 MR. BABULA: Nothing further.

11 HEARING OFFICER CELLI: Thank you. So
12 that record's closed.

13 Now, let me just go back to my outline
14 and see where we are. So we have handled -- now
15 alternatives, we've received all of the evidence
16 on alternatives in written form from CURE,
17 applicant and staff. And we aren't calling
18 witnesses.

19 Bio we're going to call next. Cultural,
20 we're finished with. Soil and water we're
21 finished with. And visual we're finished with.

22 The only things remaining is the hazmat,
23 waste. There were some questions on project
24 description.

25 And then there's transmission systems

1 engineering. And is it that I need to take care
2 of transmission systems engineering now? How long
3 is that going to take, because we need to get to
4 bio.

5 MS. GULESSERIAN: Five --

6 HEARING OFFICER CELLI: We were going to
7 start with bio.

8 MS. GULESSERIAN: About five or ten
9 minutes, really, it's going to be quick.

10 HEARING OFFICER CELLI: Okay. Is that a
11 reasonable estimate, five to ten minutes on TSE?
12 Applicant?

13 MS. LUCKHARDT: I have a few questions
14 on, cross questions for CURE. But I'm not
15 remembering, off the top of my head, how many
16 there are.

17 HEARING OFFICER CELLI: Staff?

18 MR. BABULA: Yeah, I don't have any.
19 I'm trying to find out if Marks on the line. Do
20 you know? Can you see?

21 HEARING OFFICER CELLI: Let me look.

22 MS. LUCKHARDT: In addition, if you've
23 got folks on the line, if you could open up the
24 line for Steve Richards, as well, that would be
25 great.

1 HEARING OFFICER CELLI: Okay.

2 MS. LUCKHARDT: If we're going to go to
3 transmission.

4 HEARING OFFICER CELLI: Steven Richards,
5 I just un-muted your line. Can you hear me?
6 Steven Richards --

7 MR. RICHARDS: Yes, I can. Yes, I can.

8 HEARING OFFICER CELLI: Okay. Give me a
9 minute, I need to put a mic closer to the phone so
10 that if you wouldn't mind saying your name again.
11 Mr. Richards?

12 MR. RICHARDS: Steven Richards.

13 HEARING OFFICER CELLI: Can you all hear
14 that okay? Okay. So, we have Steven Richards on
15 the line, thank you.

16 MS. LUCKHARDT: Why don't we have him
17 sworn while he's --

18 HEARING OFFICER CELLI: Just before I do
19 there was another -- who else did I need.

20 (Telephone interference.)

21 HEARING OFFICER CELLI: Okay, I've got
22 -- Mr. Richards, I think you have a (inaudible)
23 that needs --

24 (Laughter.)

25 HEARING OFFICER CELLI: -- management.

1 Okay. I'm going to open, ladies and gentlemen on
2 the phone, I want you to understand that I have
3 three or four callers here who are not identified,
4 because I think you called in without using the
5 internet and so you're not identified.

6 I'm going to open your line one at a
7 time, and ask you to speak. That means
8 everybody's going to speak, and I'm only going to
9 hear one of you, and then I'll know who's on the
10 line. So I hope that's clear.

11 I'm opening up the line right now to
12 call-in user number 1. I'm going to un-mute it.
13 And now, caller user 1 -- or all callers on the
14 phone, please state your name.

15 Okay, nobody is calling on the phone.
16 Say again, please?

17 MR. RICHARDS: I'm not sure what caller
18 number I am, but I'm Steve Richards.

19 HEARING OFFICER CELLI: Steve Richards,
20 okay. I've got you in there. That's good. But
21 caller user number 1, we don't know who that is.
22 I'm going to open up the line for caller user
23 number 10. And now, caller user number 10, if
24 you're on the line, could you --

25 MR. HESTERS: Mark Hesters on the line.

1 I don't know whether that is 10 or not.

2 HEARING OFFICER CELLI: That's who I
3 need. So this is Mark Hesters?

4 MR. HESTERS: Mark Hesters.

5 MR. ARACHCHIGE: And Sudath Arachchige.

6 HEARING OFFICER CELLI: We'll have you
7 spell that in a minute.

8 So I now have those three, Mark, Sudath
9 and Steve Richards on the line. Do I need anyone
10 else from this topic?

11 MR. BABULA: Not from us.

12 HEARING OFFICER CELLI: Okay. So,
13 Steven and Sudath and Mark, we're going to have
14 you sworn in at this time.

15 You can just do it right on the phone.
16 They can hear you.

17 Whereupon,

18 STEVEN RICHARDS, MARK HESTERS

19 and SUDATH ARACHCHIGE

20 were called as witnesses herein, and after first
21 having been duly sworn, were examined and
22 testified as follows:

23 HEARING OFFICER CELLI: Thank you.

24 You're sworn. Whose section is this? Is this

25 CURE?

1 MS. GULESSERIAN: Yes.

2 HEARING OFFICER CELLI: Go ahead,
3 please, Ms. Gulesserian.

4 MS. GULESSERIAN: Thank you.

5 DIRECT EXAMINATION

6 BY MS. GULESSERIAN:

7 Q Mr. Marcus, can you state your name for
8 the record.

9 MR. MARCUS: David Marcus, M-a-r-c-u-s.

10 MS. GULESSERIAN: And are you sponsoring
11 your testimony that has already been entered into
12 the record, exhibit 616 through 624?

13 MR. MARCUS: Yes, I am.

14 MS. GULESSERIAN: And changes to that
15 sworn testimony other than the ones made this
16 morning?

17 MR. MARCUS: No.

18 MS. GULESSERIAN: Are the opinions in
19 your testimony your own?

20 MR. MARCUS: Yes, they are.

21 MS. GULESSERIAN: Can you please
22 summarize your testimony and the basis for your
23 conclusions.

24 MR. MARCUS: Talking now about the
25 transmission engineering part of my testimony, I

1 first identified a discrepancy between the LADWP
2 description of the Barren Ridge Rinaldi Line in
3 the system impact study, which I believe is
4 exhibit 76, and the LADWP website describing the
5 Barren Ridge renewable transmission project.

6 And recommended that this should be
7 clarified, something which I think has since
8 happened in an email from staff late last week.

9 I then identified that even taking
10 exhibit 76 as accurate, it implies that in order
11 to deliver the full output of the Beacon project
12 onto the grid, there would be times when LADWP
13 generation from hydro plants would have to be
14 curtailed.

15 And recommended that rather than
16 licensing a project for 250 megawatts that would
17 not be producing a net contribution of 250
18 megawatts, the FSA conditions TSE-5 should be
19 amended in three different ways.

20 First, that it should be amended to
21 require there be a signed larger generator
22 interconnection agreement prior to the start of
23 power plant construction. That would resolve any
24 question about how all the numbers properly looked
25 at.

1 Second, that the LGIA V1 that allows for
2 the full output of Beacon to be delivered to the
3 project under N-0 conditions. It's understood and
4 it's often been the case that under contingencies
5 there may be project curtailments. But you
6 shouldn't have a project being connected to the
7 system that under normal conditions could ever,
8 say at peak load, not be able to deliver its full
9 output.

10 And then third, even if LA was willing
11 to interconnect Beacon and accept Beacon's full
12 output, if the condition for doing that was that
13 LA would curtail its generation, that that
14 shouldn't be allowed either. That the system, as
15 a whole, if it's been promised 250 megawatts,
16 should be able to accept 250 megawatts under N-0
17 conditions.

18 That was my testimony.

19 MS. GULESSERIAN: Can you clarify just
20 for the record what you mean by N-0 conditions?

21 MR. MARCUS: Yes, N-0 is a term of art,
22 is the transmission planning to refer to the
23 condition where all facilities are in service for
24 -- capable of being in service, not all power
25 plants run all the time. But every facility that

1 you want to run is either running or capable of
2 running.

3 And by contrast if any one facility not
4 specified in advance is assumed out of service,
5 that would be N-1. And then there's subdivisions.
6 if you're talking only about generators that would
7 be a G-1. If you're talking only about
8 transformers that would be T-1. N-1 is the
9 generic term for one facility out of service.

10 MS. GULESSERIAN: Thank you. Do you
11 have anything further to add?

12 MR. MARCUS: No, I do not.

13 MS. GULESSERIAN: Thank you.

14 HEARING OFFICER CELLI: Thank you.
15 Staff, please, cross.

16 CROSS-EXAMINATION

17 BY MR. BABULA:

18 Q How do you propose that we have a
19 condition that regulates what LADWP does?

20 MR. MARCUS: That the permit would say
21 that construction is conditional on obtaining an
22 LGIA with the following constraints on it. That
23 an LGIA that says you can connect but you can't
24 generate more than 50 megawatts would clearly be
25 unacceptable and no one's proposing that here.

1 But they are contemplating, based on the
2 SIS, a scenario where you'd be interconnecting
3 250, but you wouldn't be able to deliver the full
4 250.

5 And then they're contemplating -- sorry,
6 based on the SIS they're contemplating a situation
7 where you could interconnect 250, but you could
8 only deliver the full 250 if 65 to 70 megawatts of
9 LA generation were curtailed to make room for it.

10 If the email from LA to the staff from
11 last Wednesday that was forwarded on to me at the
12 end of last week, that email contemplates a
13 condition where 250 megawatts would be allowed to
14 interconnect, but not all 250 megawatts would be
15 deliverable.

16 It's unclear right now from either the
17 SIS or the LADWP email, since neither of them is
18 an LGIA, whether those proposed constraints are
19 constraints under N-0 conditions or N-1
20 conditions.

21 What I'm saying is even if somebody's
22 willing to enter into an LGIA that allows
23 curtailments under N-0 conditions, the Commission,
24 as a matter of policy, shouldn't be licensing
25 power plants with those kind of conditions.

1 Because it means that California's not going to
2 get what it's paying for. It's not going to get
3 250 reliable megawatts, if you can then have
4 minus-0 curtailments.

5 MR. BABULA: But isn't that ultimately
6 how LADWP runs their grid? Or something comes up
7 and they need to shift resources, that's up to
8 them? And we don't really have jurisdiction on
9 that?

10 MR. MARCUS: You have jurisdiction as to
11 what conditions you're willing to allow this plant
12 to be built under. And if you say an LGIA that
13 contemplates N-0 curtailments is not an LGIA that
14 is allowing full delivery of the project to the
15 grid, I believe you can do that.

16 MR. BABULA: Okay, well, I'll let our
17 technical people address the other issues that you
18 brought up. I have no further questions.

19 HEARING OFFICER CELLI: Thank you.
20 Applicant, cross?

21 MS. LUCKHARDT: Yes.

22 CROSS-EXAMINATION

23 BY MS. LUCKHARDT:

24 Q Mr. Marcus, where in the Energy
25 Commission regulations is the requirement that

1 you're stating stated?

2 MR. MARCUS: I'm not a lawyer and I
3 couldn't tell you.

4 MS. LUCKHARDT: Are you aware that it's
5 there anywhere? Are you aware that that's a legal
6 requirement?

7 MR. MARCUS: I'm not aware whether it's
8 a legal requirement or not. My testimony, as a
9 matter of policy, is that the Commission shouldn't
10 want to accept projects that are not capable of
11 delivering their full output to the grid when the
12 grid is in operation.

13 N-1 is a totally different situation.
14 But under N-0 conditions it's not a real full
15 interconnection if it's subject to curtailment
16 under N-0 conditions.

17 MS. LUCKHARDT: Are you familiar with
18 special protection schemes or RAS schemes? Those
19 are remedial action schemes.

20 MR. MARCUS: Yes, I am. Special
21 protection schemes are SPSs and remedial action
22 schemes, RASs, are two names for the same kind of
23 thing.

24 MS. LUCKHARDT: And isn't it true that a
25 RAS or an SPS scheme is included in many many

1 interconnection agreements?

2 MR. MARCUS: Yes, it's quite common to
3 have a RAS or an SPS to deal with contingency
4 conditions, that is N-1 or N-2 conditions. I
5 don't believe it's common at all to have a RAS for
6 N-0 conditions.

7 MS. LUCKHARDT: And when you're looking
8 at the SIS, where does it say that a RAS or an RAS
9 scheme is required for N-0?

10 MR. MARCUS: I think there -- well,
11 first of all, I know it doesn't say when it's
12 required, but the SAS is not the interconnection
13 agreement. It's simply a study of what might
14 happen were this project to be connected.

15 But there are references to a proposed
16 SPS on page 8 of exhibit 76.

17 MS. LUCKHARDT: And where on page 8?

18 MR. MARCUS: Under the category of
19 transient stability analysis at the top of the
20 page. It then describes cases that are going to
21 be studied; and items 6, 7, 8, 9, 10, 11, 12 and
22 13 all refer to with an SPS.

23 HEARING OFFICER CELLI: For the
24 record --

25 MR. MARCUS: And then under double

1 contingencies, those are all under the subcategory
2 of single contingencies --

3 HEARING OFFICER CELLI: Were are --

4 MS. LUCKHARDT: What are you looking at?

5 HEARING OFFICER CELLI: I want to know,
6 for the record, what exhibit we're in and --

7 MR. MARCUS: 76.

8 HEARING OFFICER CELLI: Exhibit 76,
9 thank you. Page 8 of exhibit 76?

10 MR. MARCUS: Apparently not.

11 MS. LUCKHARDT: No.

12 MR. MARCUS: Oh, it's page 8 of the
13 system impact study plan, which is, itself, --
14 which is appendix A, follows page 20.

15 MS. LUCKHARDT: Isn't it true that the
16 study plan was prepared prior to the system impact
17 study, and that it's a document that's prepared
18 prior to the system impact study?

19 MR. MARCUS: Yes, and then becomes part
20 of it because it describes what was going to be
21 studied.

22 MS. LUCKHARDT: But it --

23 MR. MARCUS: In the system impact study,
24 itself, on page 19, there's a reference to a
25 proposed SPS.

1 MS. LUCKHARDT: Isn't that reference
2 referring to the N-1 and N-2 contingency
3 conditions?

4 MR. MARCUS: I don't see how you follow
5 that. It occurs in a sentence. It says, system
6 performance meets all the applicable NERC
7 liability standards under normal, that would be N-
8 0, N-1 and N-2 contingency conditions with the
9 proposed SPS for the primary point of
10 interconnection.

11 I don't see anything there that says
12 that either what the proposed SPS is, or what
13 would trigger it.

14 HEARING OFFICER CELLI: Again, I don't
15 know, I just looked up exhibit 76; they're
16 supplemental responses to data requests. So I'm
17 not sure what exhibit we're talking about.

18 MS. LUCKHARDT: Exhibit 76 includes an
19 attachment. The attachment is DR-50 to exhibit
20 76, which is the system impact study.

21 HEARING OFFICER CELLI: The system
22 impact study, I got you. Thank you. So that's in
23 appendix A?

24 MR. MARCUS: No. I was referring to
25 appendix A of the -- page 8 of appendix A. And

1 then I was subsequently referring to page 19 of
2 the SPS, itself.

3 I believe it also is referenced on page
4 7. Perhaps not.

5 MS. LUCKHARDT: Referring you to page 7,
6 isn't it true that that's required with an outage?
7 That's indicating that an SPS would be required
8 only with an outage?

9 MR. MARCUS: Yes. Page 7 is a list of
10 particular outages under which an SPS would be
11 required.

12 MS. LUCKHARDT: So you can point to no
13 specific place where it says that an SPS would be
14 required under normal or N-0 conditions?

15 MR. MARCUS: No. And I'm hoping that
16 there would not be one in the final LGIA. And all
17 I'm proposing is that there shouldn't be one. I'm
18 not saying that they have proposed one here. I'm
19 saying that they shouldn't propose one, or that
20 there shouldn't be one that would be associated
21 with an Energy Commission-approved project.

22 MS. LUCKHARDT: Isn't it true that the
23 SPS states that there's no adverse system impacts
24 were found with the VSP interconnection at Barren
25 Ridge in terms of transient, post-transient

1 stability analysis?

2 MR. MARCUS: Yes. And those are all
3 transmission system impacts. That's saying the
4 wires, themselves, are going to be intact. The
5 wires are not going to burn down under various
6 transient conditions with an SPS to make sure that
7 they don't.

8 That doesn't address the issue raised in
9 my testimony, and for that matter, conceded in
10 applicant's rebuttal testimony, that you wouldn't
11 necessarily get the full 250 megawatts of output
12 of the plant if there were curtailments triggered
13 by an SPS.

14 MS. LUCKHARDT: But isn't that something
15 that is required for almost every interconnection
16 of a facility in California?

17 MR. MARCUS: I'm sorry, isn't what
18 required for almost every interconnection?

19 MS. LUCKHARDT: Under outage conditions,
20 is it unusual under outage conditions to have to
21 turn something down?

22 MR. MARCUS: Under outage conditions
23 there's --

24 MS. LUCKHARDT: To back off a power
25 plant.

1 MR. MARCUS: Under outage conditions it
2 is not unusual to have to back off a power plant.
3 I'm not sure it's norm, but it's not unusual.

4 MS. LUCKHARDT: Okay, I have nothing
5 further.

6 HEARING OFFICER CELLI: Staff, any
7 cross?

8 MR. BABULA: I have no more cross.

9 HEARING OFFICER CELLI: Okay. Any
10 redirect, Ms. Gulesserian?

11 MS. GULESSERIAN: Yes.

12 REDIRECT EXAMINATION

13 BY MS. GULESSERIAN:

14 Q David, when you testify about the LADWP
15 stating that they may need to curtail megawatts of
16 Beacon Power Plant, is that under normal
17 conditions or under outage conditions?

18 We moved to enter into the record an
19 exhibit which is exhibit -- it was 655. This is
20 an email sent from CEC Staff, and they said,
21 please forward this to David Marcus. It is a
22 LADWP's --

23 HEARING OFFICER CELLI: Let's do this --

24 MS. GULESSERIAN: So I can do it on
25 cross, because it's theirs.

1 HEARING OFFICER CELLI: Maybe what we
2 can do is --

3 MS. GULESSERIAN: I think we'll
4 stipulate it.

5 HEARING OFFICER CELLI: -- if there's
6 any objection to stipulating this one in, because
7 we've already ruled that this document can come in
8 at trial. What is the document?

9 MS. GULESSERIAN: This is -- we had a
10 conference call at your suggestion to try and work
11 out TSE issues --

12 HEARING OFFICER CELLI: Yes.

13 MS. GULESSERIAN: -- last week. And we
14 received on March 17th, which is on Wednesday,
15 this email from Energy Commission Staff, Sudath --
16 sorry, pronounced that wrong -- saying please
17 forward this information from LADWP.

18 HEARING OFFICER CELLI: I'm holding it
19 right now. Any objection to this document coming
20 in, applicant, Ms. Luckhardt?

21 MS. LUCKHARDT: No.

22 HEARING OFFICER CELLI: Staff, any
23 objection?

24 MR. BABULA: No objection.

25 HEARING OFFICER CELLI: Okay, so this

1 document is CURE's next in order. And CURE left
2 off at -- we've accepted -- we've received
3 everything from 600 to 636. There is 637 out
4 there, which --

5 MS. GULESSERIAN: We could like to just
6 leave it as a placeholder if that --

7 HEARING OFFICER CELLI: I'll just leave
8 that there. So this document, which is a
9 3/16/2010 email from Sudath Arachchige to docket
10 optical system, signed by Li Lee, would be marked
11 for identification as CURE's 638, for
12 identification.

13 Do you have a motion at this time? Do
14 you want to move it into the record so it can be
15 received, Ms. Gulesserian?

16 MS. GULESSERIAN: Yes, we move to enter
17 exhibit 638.

18 HEARING OFFICER CELLI: 638 is received
19 into evidence.

20 MS. GULESSERIAN: Thank you. Mr.
21 Marcus, can you answer the question now?

22 MR. MARCUS: Yes, you asked me whether
23 in what we now know as exhibit 638 the proposed
24 curtailment of BSP was under normal or contingency
25 conditions.

1 And that's addressed in the paragraph
2 number two on page 1 of exhibit 638, where it says
3 that, LADWP, quote, "will consider a remedial
4 action scheme, RAS, that will mitigate possible
5 overload of the Barren Ridge Rinaldi 230 kV line
6 prior to the construction of Barren Ridge
7 Renewable Transmission Project."

8 "This RAS would include ramping down VSP
9 generation or tripping VSP and would be
10 temporarily in place until the completion of the
11 Barren Ridge Renewable Transmission Project."

12 It does not say one way or the other
13 whether the ramping down or tripping of Beacon
14 would be occurring under normal conditions or N-1
15 or N-2 conditions. It doesn't say what the
16 proposed triggering events are, whether they are
17 high load, high generation, a combination of high
18 load and high generation, or some combination of
19 load and generation together with the transmission
20 outage.

21 HEARING OFFICER CELLI: Well, I have a
22 feeling we're going to hear about that, because
23 they're online.

24 Where are we now? Are we on cross?

25 MS. GULESSERIAN: Yes -- no, redirect.

1 HEARING OFFICER CELLI: Okay, so that
2 was redirect.

3 MS. GULESSERIAN: I don't have any
4 other --

5 HEARING OFFICER CELLI: Any recross?

6 MR. BABULA: No.

7 HEARING OFFICER CELLI: Recross?

8 MS. LUCKHARDT: No.

9 HEARING OFFICER CELLI: Any further
10 witnesses from CURE with regard to transmission
11 system engineering?

12 MS. GULESSERIAN: No.

13 HEARING OFFICER CELLI: Okay. At this
14 time CURE, we'll take in, it was exhibit 638,
15 received.

16 We'll turn to staff. Do you have a
17 witness?

18 DIRECT EXAMINATION

19 BY MR. BABULA:

20 Q Mark, are you on the line?

21 MR. HESTERS: Yeah, we're both on the
22 line.

23 MR. BABULA: Did you hear Mr. Marcus'
24 testimony?

25 MR. HESTERS: Yes.

1 MR. BABULA: Great. Would you like to
2 address what he said? I know you've gone through
3 this. You've already reviewed his rebuttal
4 testimony that was submitted. So if you can just
5 briefly address what he stated regarding concerns
6 with the line and the LGA and so forth.

7 MR. HESTERS: Yeah, one of the main
8 concerns -- again, this is Mark Hesters, last name
9 spelled H-e-s-t-e-r-s. I guess the main point of
10 the testimony of Dave Marcus' testimony was on
11 normal conditions. You don't usually run remedial
12 action schemes under normal conditions. Those are
13 usually reserved just for contingencies.

14 So we were talking about normal
15 conditions with all elements, with everything
16 working. The backdown or the tripping of
17 generation would usually fall under something
18 called congestion management.

19 In this case for these lines we're
20 talking about essentially three types of
21 generators on the line. You've got a wind
22 generator, a solar generator and then LA has some
23 hydroelectric generation.

24 The rare condition where the line would
25 be overloaded under normal conditions would be

1 when the wind and the solar were operating
2 together at pretty much their maximum output. And
3 that doesn't happen very often.

4 To basically back down some generation
5 under that condition isn't sort of an outrageous
6 idea. And LA proposed in some cases that they
7 would back down the hydroelectric generation under
8 that condition. Partly I'm inferring that from
9 one of the SPSs that shows up in the system impact
10 study.

11 That's a pretty reasonable solution to
12 this because the hydroelectric can often be
13 stored. On the rare chance that the wind and the
14 solar are generating at the same time, you just
15 have them for the moment that the wind is blowing
16 and the sun is shining. They may not be doing
17 that tomorrow and you may be able to get -- you
18 may save the hydro event for another hour, another
19 day, another week. You can't really save the sun
20 or the wind.

21 So I'm not -- I guess that's my comment
22 on the David Marcus testimony. It's pretty
23 reasonable that you would back down something and
24 that you would try and build a transmission system
25 that operated under most conditions.

1 And, you know, if you actually built the
2 transmission system so that it could take all the
3 wind and all the solar and all the hydro, you'd be
4 almost over-building the system because you don't
5 have all three of those together very often.

6 So, that's it.

7 MR. BABULA: Okay, I have no further
8 questions.

9 HEARING OFFICER CELLI: Any questions on
10 cross by applicant of Mr. Hesters?

11 MS. LUCKHARDT: We have no additional
12 questions for Mr. Hesters.

13 HEARING OFFICER CELLI: Cross-
14 examination of Mr. Hesters by CURE?

15 MS. GULESSERIAN: No cross.

16 HEARING OFFICER CELLI: At some point,
17 applicant or staff, are you going to address the
18 three suggested conclusions to the condition of
19 certification for Mr. Marcus? Is that something
20 you need to hear from the witnesses on? I just
21 want to know what to do with this.

22 MR. BABULA: Well, I don't have --

23 (Parties speaking simultaneously.)

24 MR. BABULA: His change is to have the
25 condition of certification read, you need to have

1 the agreement before construction of the project,
2 I don't think they shifted the burden in the sense
3 of what exactly is the problem.

4 HEARING OFFICER CELLI: Well, it is
5 their burden.

6 MR. BABULA: Right.

7 HEARING OFFICER CELLI: The burden is
8 you've made three suggestions and I just, without
9 getting into it too deeply, I just wanted to know
10 whether you anticipated responding to any of those
11 three conditions.

12 MR. BABULA: It's in our FSA testimony,
13 it's there. It stands. I don't believe they
14 shifted the burden to even have us have to address
15 that.

16 MR. HESTERS: We did have one response
17 to the first condition change --

18 HEARING OFFICER CELLI: Mr. Hesters, can
19 you hear me?

20 MR. HESTERS: This is Mark Hesters.

21 HEARING OFFICER CELLI: Mark, could you
22 hold on for a minute --

23 MR. HESTERS: The first condition change
24 that is proposed by --

25 HEARING OFFICER CELLI: No, -- there's

1 no question --

2 MR. HESTERS: -- CURE was that --

3 HEARING OFFICER CELLI: -- pending --

4 MR. HESTERS: -- we require that --

5 HEARING OFFICER CELLI: This is why --

6 MR. HESTERS: -- the large generator --

7 (Parties speaking simultaneously.)

8 (Laughter.)

9 MR. HESTERS: -- agreement be submitted
10 prior to the start of construction of the power
11 plant.

12 HEARING OFFICER CELLI: Actually, Mr.
13 Hesters, can you hear me?

14 MR. HESTERS: Yes.

15 HEARING OFFICER CELLI: There's no
16 question pending. I'm just going to ask you to
17 hold off for a moment.

18 MR. HESTERS: Okay.

19 HEARING OFFICER CELLI: Thank you.
20 Applicant, are you going to -- I just want to know
21 whether --

22 MS. GULESSERIAN: We move to strike that
23 what was -- whatever was said --

24 HEARING OFFICER CELLI: Motion granted.

25 MS. GULESSERIAN: Thank you.

1 HEARING OFFICER CELLI: Applicant, --

2 MS. LUCKHARDT: Would you like us to
3 respond as to whether the project accepts the
4 requested changes or the requested additions to
5 the condition --

6 HEARING OFFICER CELLI: I think that --

7 MS. LUCKHARDT: -- proposed by Mr.
8 Marcus? I can have Mr. McCloud respond to that.

9 HEARING OFFICER CELLI: Here's what I'm
10 going to do instead, actually. When it comes time
11 to drafting the briefs I'm going to need the
12 parties to point me to where this is or is not
13 addressed. That's all. I'm not asking that you
14 give us any particular testimony at this time. I
15 just need to know whether and where the Committee
16 can look to see whether those two issues were
17 addressed. That's all.

18 MS. LUCKHARDT: Okay, and the issues
19 that he brought up as being issues, or -- the
20 issues that he brought up, is that your --

21 HEARING OFFICER CELLI: That's it, he
22 brought up three conditions, wanted to change the
23 condition in three ways.

24 MS. LUCKHARDT: Yeah. We've got
25 responses to the -- I think I'll just have

1 Mr. McCloud respond right here just to be sure
2 that we haven't missed anything as to whether he'd
3 be willing to accept the conditions proposed by
4 Mr. Marcus. And then we don't have to worry about
5 whether that's on or not on the record.

6 HEARING OFFICER CELLI: But, you know
7 what, we're in the middle of Mr. Hesters' -- the
8 reason I was asking is I thought if anyone, this
9 was going to be the witness to talk about it.

10 In any event, --

11 MR. BABULA: Do you want -- I mean I
12 don't want to bog this process. If you want him
13 to address it, --

14 HEARING OFFICER CELLI: That's okay,
15 I'll --

16 MS. LUCKHARDT: I believe that Mr.
17 Hesters is going to address this as to whether he
18 would recommend it.

19 HEARING OFFICER CELLI: Okay, then the
20 question, I guess, of Mr. Hesters is with
21 applicant at this time?

22 MS. LUCKHARDT: Sure.

23 CROSS-EXAMINATION

24 BY MS. LUCKHARDT:

25 Q Mr. Hesters, do you --

1 HEARING OFFICER CELLI: I'm sorry, I may
2 have lost track.

3 MS. LUCKHARDT: I'm just trying to make
4 sure that you're getting -- if that's the question
5 we want to ask.

6 HEARING OFFICER CELLI: Any further
7 cross of Mr. Hesters?

8 MS. LUCKHARDT: I guess the question --
9 Mr. Hesters, this is Jane Luckhardt. I just have
10 a question for you.

11 Do you feel the need to include the
12 requested changes to the conditions of
13 certification from Mr. Marcus into your condition
14 of certification?

15 MR. HESTERS: I have to say you cut out
16 for a brief second there. This is Mark Hesters.
17 I'm assuming you're asking me about the conditions
18 of certification changes proposed by David Marcus,
19 is that right?

20 MS. LUCKHARDT: Yes, and whether you
21 feel the need to include his request that we have
22 a signed large generator interconnection agreement
23 prior to, I think prior to construction, if I'm
24 paraphrasing it correctly.

25 MR. HESTERS: It's not a simple answer.

1 It's a little more complicated. We generally
2 require the large generator interconnection
3 agreement prior to the start of construction of
4 transmission facilities. And we would agree to
5 that change.

6 We would not agree to a change that it
7 be submitted prior to the start of the facility,
8 itself.

9 MS. LUCKHARDT: Thank you. I have
10 nothing further.

11 HEARING OFFICER CELLI: Cross, CURE, of
12 Mr. Hesters?

13 MS. GULESSERIAN: We don't have anything
14 for him.

15 HEARING OFFICER CELLI: Redirect of Mr.
16 Hesters?

17 MR. BABULA: I don't have anything
18 further.

19 HEARING OFFICER CELLI: Okay. Do you
20 want to call Mr. Arachchige?

21 MR. BABULA: No, I just wanted -- Mark
22 took care of it.

23 HEARING OFFICER CELLI: Okay. Did
24 anyone want to cross Mr. Arachchige?

25 MR. BABULA: Just call him Sudath.

1 HEARING OFFICER CELLI: Sudath.

2 MS. LUCKHARDT: No.

3 HEARING OFFICER CELLI: No cross, okay.

4 And then did we hear -- we heard from Mr. McCloud.

5 MS. LUCKHARDT: We haven't heard from
6 Mr. McCloud based upon the information provided by
7 Mr. Hesters.

8 DIRECT EXAMINATION

9 BY MS. LUCKHARDT:

10 Q And in an effort not to be repetitive, I
11 would only ask Mr. McCloud whether he thinks it's
12 necessary to include the requested additional
13 requirements that Mr. Marcus has presented.

14 MR. McCLOUD: And no, I do not.

15 HEARING OFFICER CELLI: Thank you.

16 MS. LUCKHARDT: And then I think there's
17 one potential exhibit, if I can get to the bottom
18 of everything that's here, that we may not have
19 entered when we entered transmission line safety
20 and nuisance. And that would be exhibit 334. And
21 if that has not been entered, I would like to have
22 that -- or we would offer that into evidence at
23 this time. That's the rebuttal testimony --

24 HEARING OFFICER CELLI: 334 is already
25 in.

1 MS. LUCKHARDT: Okay.

2 HEARING OFFICER CELLI: Transmission
3 line safety and engineering.

4 MS. LUCKHARDT: Great, as long as --

5 HEARING OFFICER CELLI: Oh, you withheld
6 it. So you're introducing it now.

7 MS. LUCKHARDT: Yeah.

8 HEARING OFFICER CELLI: Any objection,
9 CURE, to exhibit 334, rebuttal testimony of Duane
10 McCloud on transmission systems engineering?

11 MS. GULESSERIAN: No.

12 HEARING OFFICER CELLI: Any objection by
13 staff?

14 MR. BABULA: No objection.

15 HEARING OFFICER CELLI: Okay. On
16 applicant's motion exhibit 334 is received into
17 evidence as 334, exhibit 334.

18 With that are we finished with
19 transmission system engineering.

20 MS. GULESSERIAN: I have a couple
21 questions for Mr. McCloud.

22 HEARING OFFICER CELLI: Okay, CURE.

23 CROSS-EXAMINATION

24 BY MS. GULESSERIAN:

25 Q In your rebuttal testimony, which is

1 exhibit 334, I believe, there's a discrepancy in
2 LADWP's public statements regarding the Barren
3 Ridge Rinaldi transmission line capacity and
4 current usage, between the SIS and LADWP's Barren
5 Ridge Renewable Transmission Project. What --

6 MS. LUCKHARDT: I would object to that
7 question as presuming that there's a discrepancy.
8 And I don't believe that we agree with that.

9 HEARING OFFICER CELLI: Okay, so the
10 objection is sustained in that there's a
11 conclusion.

12 MS. GULESSERIAN: Let me read from the
13 rebuttal testimony. It states that --

14 HEARING OFFICER CELLI: What are you
15 reading from, exhibit 334?

16 MS. GULESSERIAN: I'm reading from
17 exhibit 334.

18 HEARING OFFICER CELLI: Line or page?

19 MS. GULESSERIAN: Page 1, answer 6. It
20 says in the sentence that begins, If you simply
21 look at the value, and at the end it says, there
22 does appear to be a discrepancy. Okay.

23 "If you simply look at the value
24 assigned to Barren Ridge Rinaldi line by LADWP and
25 the document referenced by Mr. Marcus for the

1 rating of the Owens Gorge Rinaldi line, there does
2 appear to be a discrepancy."

3 That's the discrepancy I'm referring to.

4 MS. LUCKHARDT: And I would again say
5 that based upon the way that sentence is phrased,
6 we are not agreeing that there is a discrepancy.
7 We are simply stating the way it was presented.

8 HEARING OFFICER CELLI: I understand
9 that. But, as a question, it's a fair question.
10 Or I'm going to allow the question.

11 MS. GULESSERIAN: Thank you.

12 Okay, so in your rebuttal it states that
13 there does appear to be a discrepancy. But then
14 you go on to argue, the apparent discrepancy may
15 be because the website is addressing a different
16 part of the Owens Gorge Rinaldi line than the SIS.
17 Is that correct?

18 MR. McCLOUD: That's correct.

19 MS. GULESSERIAN: Okay. Did you review
20 the LADWP website, itself, to see what it says?

21 MR. McCLOUD: I reviewed only the
22 testimony from Mr. Marcus.

23 MS. GULESSERIAN: Then which attached to
24 that testimony was the LADWP website.

25 MS. LUCKHARDT: I'm not sure that that's

1 the case. I think the LADWP website may be in the
2 additional exhibits, the ones that were presented
3 on Monday -- on Friday, as opposed to exhibits
4 that were presented earlier.

5 And I just like to be sure that we are
6 referring to exhibits that were originally
7 attached to his testimony and not later-filed
8 exhibits.

9 MS. GULESSERIAN: Yes. We would like to
10 refer him to the original, the LADWP website on
11 the original testimony. And --

12 MS. LUCKHARDT: Which is located?

13 MS. GULESSERIAN: -- located at 619 --

14 MS. LUCKHARDT: And where?

15 MR. BABULA: I'm kind of losing track
16 about what we're arguing about here.

17 MR. McCLOUD: Let me --

18 MS. GULESSERIAN: Really, --

19 MR. McCLOUD: What we're talking about
20 right now is exhibit 2, LADWP, Barren Ridge
21 Renewable Transmission Project. This was received
22 into evidence already. It was sponsored by David
23 Marcus, exhibit --

24 MR. BABULA: I thought the email that
25 was just put into exhibits was what Mr. Marcus

1 said resolved some of these questions about
2 rating. I thought that we were past that.

3 HEARING OFFICER CELLI: That may be the
4 case, but right now there was a question about
5 discrepancies that were pointed out in Mr.
6 McCloud's testimony, in his rebuttal testimony.

7 CURE was asking a question. Applicant
8 interrupted the question based on the idea that
9 the question was predicated on some exhibits that
10 were not received into testimony, which isn't
11 really necessary to be read, whatever. Maybe you
12 just need to find out whether he read it and knows
13 what they're talking about.

14 MS. LUCKHARDT: He already said that he
15 had not.

16 HEARING OFFICER CELLI: Let's let Mr.
17 McCloud answer this question.

18 MS. LUCKHARDT: Do we remember what the
19 question was?

20 MS. GULESSERIAN: I just want to make
21 sure that he's been able to look at that website
22 that was attached to the testimony because we are
23 talking about the discrepancy, what the LADWP
24 website says.

25 HEARING OFFICER CELLI: So, Mr. McCloud,

1 have you read -- have you seen the website that
2 Ms. Gulesserian is asking about?

3 MS. LUCKHARDT: I think I would not want
4 it to be the website, in general.

5 MS. GULESSERIAN: Sorry, excuse me, --

6 MS. LUCKHARDT: I would want it to be
7 those pages that are --

8 MS. GULESSERIAN: -- exhibit 619.

9 MS. LUCKHARDT: -- attached.

10 MS. GULESSERIAN: I apologize.

11 MR. McCLOUD: Yes, I have.

12 HEARING OFFICER CELLI: Exhibit 619,
13 you're familiar with 619?

14 MR. McCLOUD: I have read through it,
15 yes.

16 HEARING OFFICER CELLI: Thank you. Go
17 ahead, Ms. Gulesserian.

18 MS. GULESSERIAN: Thank you. Isn't it
19 correct that you stated anyone of the segments of
20 the longer transmission path identified by Mr.
21 Marcus along the Owens Gorge Rinaldi line could be
22 the segment that limits the overall transmission
23 capacity of a longer path to 400 megawatts? You
24 have that in your testimony at the top of page 2.

25 MR. McCLOUD: Yes, yes.

1 MS. GULESSERIAN: Okay. Have you seen
2 the revised website from LADWP correcting these --
3 adjusting these numbers?

4 MS. LUCKHARDT: Is that different from
5 what's in the --

6 MS. GULESSERIAN: Yes, this is what we
7 talked about earlier. CURE was going to identify
8 it as an exhibit. It's an update, so we cannot be
9 relying on the old 619 --

10 HEARING OFFICER CELLI: The question is
11 has Mr. McCloud --

12 MS. LUCKHARDT: Has Mr. McCloud seen it?

13 MS. GULESSERIAN: Has Mr. McCloud seen
14 this, the revised LADWP website --

15 MR. McCLOUD: No.

16 MS. GULESSERIAN: -- that we discussed
17 on the phone last week?

18 MR. McCLOUD: No, I have not.

19 MS. GULESSERIAN: Okay. I would like to
20 -- do you recall discussing it during our phone
21 conversation last week?

22 MR. McCLOUD: I do not recall discussing
23 it.

24 MS. GULESSERIAN: Okay. I'd like to
25 move to enter into the record an exhibit that we

1 discussed during our --

2 HEARING OFFICER CELLI: What is the
3 exhibit --

4 MS. GULESSERIAN: The exhibit is the
5 same thing as exhibit 619, but LADWP has revised
6 its numbers on the Barren Ridge Renewable
7 Transmission Project so it's the most up-to-date
8 information.

9 HEARING OFFICER CELLI: Let me ask --

10 MS. LUCKHARDT: And this --

11 HEARING OFFICER CELLI: -- if I may.
12 You have a date, Ms. Gulesserian? So what is the
13 date of the document?

14 MS. GULESSERIAN: It was obtained from
15 downloading it from the website on March 17, 2009.

16 HEARING OFFICER CELLI: What is the date
17 of the updated information?

18 MS. GULESSERIAN: Updated January 2010.
19 Our original testimony was submitted in November
20 2010 (sic). This would be the -- 2009, excuse me.

21 HEARING OFFICER CELLI: So, the LADWP
22 updated the information on their website in
23 January of this year. And the only real relevant
24 question, Mr. McCloud, is whether you were aware
25 of that change, and if you're familiar with those

1 changes?

2 MR. McCLOUD: And, no, I'm not. I'm not
3 familiar with the document that she's referring
4 to.

5 HEARING OFFICER CELLI: So you didn't
6 look at the website, and you haven't seen it at
7 least since January of 2010?

8 MR. McCLOUD: No, I have not.

9 HEARING OFFICER CELLI: Okay. Then it's
10 limited relevance at this point.

11 MS. GULESSERIAN: And, no, it's very
12 relevant. The testimony was recently submitted by
13 the applicant, and it doesn't rely on the most
14 recent updated information regarding the --

15 HEARING OFFICER CELLI: That point is
16 made. I mean that's a point that you've got. But
17 here's the point I would -- I'm trying to decide
18 whether I need to bring this document into the
19 record. Why does the Committee need to read this,
20 other than to know that it's not a part of Mr.
21 McCloud's --

22 MS. LUCKHARDT: And I actually would
23 object to this. There was an opportunity for
24 filing rebuttal testimony. They did not take
25 advantage of that opportunity.

1 They did so with Mr. Hagemann's
2 testimony where he had found additional
3 information.

4 HEARING OFFICER CELLI: Yeah, I think --

5 MS. LUCKHARDT: They supplemented his
6 testimony. This showed up the Friday before. If
7 they were aware of it and wanted to bring it to
8 all of our attention, they should have. And had
9 plenty of opportunity to do so.

10 HEARING OFFICER CELLI: I think that the
11 point is this --

12 MS. GULESSERIAN: We were --

13 HEARING OFFICER CELLI: They're bringing
14 it in on cross, which is okay if Mr. McCloud was
15 aware of it. But since he's not aware of it, it's
16 sort of a nullity at this point.

17 MS. GULESSERIAN: We discussed this, the
18 updated website, during our phone call last week
19 at the direction of you to try and resolve the
20 issue. Everybody was directed to --

21 MS. LUCKHARDT: At this point I would --

22 MS. GULESSERIAN: -- the new information
23 that LADWP has regarding the Barren Ridge
24 Renewable Transmission Project, so that we would
25 all be on the same page.

1 HEARING OFFICER CELLI: Can you just --

2 MS. LUCKHARDT: We were directed to the
3 email from LADWP, not to the website. LA's
4 website on their Barren Ridge Transmission
5 Project.

6 HEARING OFFICER CELLI: Here's what I'm
7 trying to figure out at five minutes to 3:00 and
8 we're still talking about transmission system.
9 What I'm trying to figure out is what is the
10 relevance, what does this thing say, what is the
11 point.

12 You've got a website out there. It says
13 what, I presume, the capacities are of these
14 lines. And there was an upgrade in January 2010
15 that says there's been a change.

16 And can you just give me what's the
17 change?

18 MS. GULESSERIAN: It's the modification
19 from LADWP shows that the part of the transmission
20 line with their 400 megawatt rating that Mr.
21 McCloud is referring to, which was previously
22 identified in exhibit 619 as the Owens Gorge
23 Rinaldi is now identified as the Barren Ridge
24 Rinaldi line.

25 HEARING OFFICER CELLI: So it's just a

1 change in the name, okay.

2 MS. GULESSERIAN: It is not -- it is no
3 longer any one of the segments of the longer
4 transmission path that Mr. McCloud is referring
5 to. It is specifically the Barren Ridge Rinaldi.

6 HEARING OFFICER CELLI: If he was armed
7 with that information. But since this is a change
8 in nomenclature that occurred outside of his
9 awareness, then it isn't -- I don't know that you
10 can -- I think that in order to appropriately
11 describe the information that he's putting into
12 the record, we have to deal with whatever his
13 state of awareness was at the time that he stated
14 it.

15 And if the testimony is he wasn't aware
16 of this change in nomenclature of the line, then
17 it really shouldn't have any effect on his
18 testimony.

19 MS. GULESSERIAN: This is --

20 MS. LUCKHARDT: I would also object --

21 MS. GULESSERIAN: -- recross of his --
22 this is addressing his rebuttal testimony that was
23 filed. We would like to know whether his opinions
24 have changed today.

25 HEARING OFFICER CELLI: That's fair and

1 you can ask that --

2 MS. LUCKHARDT: But at some point --

3 HEARING OFFICER CELLI: I'm just not
4 sure I want to bring this thing in --

5 MS. LUCKHARDT: I'm just not sure at
6 some point that this is relevant. What we're
7 talking about is the website talking --
8 transmission project as opposed to looking at an
9 analysis that was done by LA for this specific
10 project.

11 I'm just not sure that it makes good
12 sense of our time to be spending hours looking at
13 something like LA's website, as opposed to looking
14 at the analysis that was done on this specific
15 project by LADWP, who is the transmission owner
16 and operator of that system.

17 HEARING OFFICER CELLI: So this goes --

18 MS. GULESSERIAN: Mr. McCloud refers to
19 the LADWP website in his rebuttal testimony, and
20 refers to the information that I just spoke about
21 regarding that segments of the longer transmission
22 path, he says, could be any one of the segments.

23 And the LADWP website, at the time that
24 this rebuttal testimony was filed, does not show
25 that.

1 MS. LUCKHARDT: And that's because he
2 based it on the analysis that was included in Mr.
3 Marcus' testimony. It was rebuttal to Mr. Marcus'
4 testimony and the attachments included thereto.

5 HEARING OFFICER CELLI: And that's -- I
6 kind of -- my sense is that this is -- it isn't as
7 much of -- let me put it this way: I don't think
8 this document does anything more than impeaches
9 Mr. McCloud's, if he was aware of the existence of
10 the document change of the nomenclature of the
11 line.

12 And since the testimony already is that
13 he was not aware of it, it is of questionable
14 value. So I'm disinclined to bring it in right
15 now, because all I think it's going to do is
16 confuse the issue. We'll be bringing in a change
17 he wasn't aware of, and didn't rely on, and isn't
18 using so far in his rebuttal testimony.

19 His rebuttal testimony, if I have this
20 right, Mr. McCloud, your rebuttal testimony is
21 based upon what you already said in the previous
22 testimony. And if it was relying on that
23 transmission, was it your understanding of the way
24 it was when you last visited it sometime before
25 January 2010?

1 MR. McCLOUD: That is correct.

2 HEARING OFFICER CELLI: Okay, I mean if
3 I'm understanding this correctly, I just don't
4 think that it does anything more than cloud the
5 issue.

6 MS. GULESSERIAN: The testimony
7 specifically states that he's referring to LADWP's
8 information on the transmission line and Mr.
9 Marcus' testimony. So, he has rebuttal testimony
10 to my witness that has incorrect information in
11 it. And the LADWP website that is referred in
12 there says something else.

13 So we believe that it should be entered
14 into the record. It's not going to confuse the
15 issue. It's evidence related to the case that
16 people would normally rely on, the most updated
17 information regarding the Barren Ridge Renewable
18 Transmission Project from a agency, the Los
19 Angeles --

20 HEARING OFFICER CELLI: If you can lay a
21 foundation using Mr. McCloud right now to say that
22 he was aware of that document as it exists now,
23 the way that you want to put it in as a new
24 document, then you've got yourself a foundation.

25 MS. LUCKHARDT: And I would --

1 HEARING OFFICER CELLI: But if not, then
2 there is no foundation.

3 MS. LUCKHARDT: And I would object that
4 anyone would do a transmission study based on
5 another transmission owner's website. So I just
6 don't understand the absolute relevance of this
7 document when you're looking at an interconnection
8 study for --

9 HEARING OFFICER CELLI: Let me just put
10 it this way. I'm not sure she's going to be able
11 to lay a foundation. But I'm going to give Ms.
12 Gulesserian an opportunity to lay a foundation.
13 If she can lay the foundation, and the foundation
14 needed is he was aware of this incarnation of the
15 website, that he relied on this incarnation of the
16 website in making his conclusion, and that it
17 would be relevant.

18 But if he wasn't aware of it, I don't
19 know how relevant it is. So, Ms. Gulesserian, I
20 think you need to lay a foundation. You need to
21 make that showing or else it has no relevance.

22 MS. GULESSERIAN: I was going to try and
23 ask one simple question that maybe would end this
24 all.

25 HEARING OFFICER CELLI: Well, let's go

1 for that.

2 MS. GULESSERIAN: Rather than going for
3 the -- laying the foundation.

4 If you knew that the existing Barren
5 Ridge, if I can ask a question correctly, if you
6 knew that the existing Barren Ridge Rinaldi 230 kV
7 transmission line is the line that is referred to
8 in the LADWP website instead of the Owens Gorge
9 Rinaldi Line, would that change your testimony in
10 any way?

11 MS. LUCKHARDT: And you're saying if you
12 knew, based upon information that was contained in
13 a website?

14 MS. GULESSERIAN: Based on LADWP's
15 project description. This is their project.

16 MS. LUCKHARDT: Based on something
17 that's in a website?

18 HEARING OFFICER CELLI: Your question
19 was if you knew that the Barren Ridge Rinaldi 230
20 kV line was what, Ms. Gulesserian?

21 MS. GULESSERIAN: If you knew that the
22 Barren Ridge Rinaldi transmission line, which has
23 a 400 megawatt transfer capacity currently is
24 loaded with 160 megawatts of electrical load,
25 leaving only 240 megawatts of excess capacity, if

1 you knew that it was the Barren Ridge Rinaldi Line
2 and not the Owens Gorge Rinaldi Line, as
3 referenced in that testimony, would it change your
4 opinion that any one of the segments of the longer
5 transmission path identified by Mr. Marcus along
6 that line could be the segment?

7 MR. McCLOUD: Let me make sure I
8 understand your question here.

9 MS. GULESSERIAN: Okay.

10 MR. McCLOUD: The question is if I knew
11 the name of the line was changed --

12 MS. GULESSERIAN: Right. If you knew
13 that it said Barren Ridge instead of Owens --

14 MR. McCLOUD: -- and nothing else,
15 would it change my opinion of it?

16 MS. GULESSERIAN: Right. If you knew
17 that it said Barren Ridge transmission line
18 instead of Owens Gorge transmission line, would
19 you still be saying it could be any one of the
20 segments?

21 MR. McCLOUD: I'm going to answer the
22 question with clarification. If the only change
23 that I was aware of was that the name of the line
24 had changed, it would not have changed my
25 conclusions about the opinion in the testimony.

1 MS. GULESSERIAN: It's not the name of a
2 line, it's the name of the segment that has that
3 limit.

4 MS. LUCKHARDT: I'm sorry, but you are
5 assuming -- so you're asking him to -- you are
6 stating that that is a fact, that the name of the
7 segment has changed. And I believe that that is a
8 fact that is not in evidence at this time.

9 HEARING OFFICER CELLI: It's a
10 hypothetical question. What I'm going to do is
11 I'm going to ask it this way, because Mr. McCloud
12 has already testified that his opinion would not
13 change if the name of the lines changed.

14 Now you want to change the question to a
15 segment.

16 MS. GULESSERIAN: The question is
17 whether this segment, I mean it is a segment.
18 Barren Ridge Rinaldi segment.

19 HEARING OFFICER CELLI: Okay, Barren
20 Ridge Rinaldi segment --

21 MS. GULESSERIAN: And it's one sentence
22 at the top of line 2 on your testimony that says
23 any one of the segments along the Owens Gorge
24 Rinaldi line could be the segment.

25 HEARING OFFICER CELLI: You see what

1 she's pointing to --

2 MR. McCLOUD: Yes, I do.

3 HEARING OFFICER CELLI: So he sees the
4 testimony. Now the question is?

5 MS. GULESSERIAN: Now the question is if
6 you knew that it was specifically the Barren Ridge
7 Rinaldi transmission line segment, which has a 400
8 megawatt transfer capacity, currently loaded with
9 160 megawatts of electrical load, leaving only 240
10 megawatts of excess capacity, would you still be
11 saying it's any one of the segments?

12 MR. McCLOUD: Okay, the question you
13 just asked is inconsistent with the transmission
14 maps in the SIS, and is inconsistent with the
15 previous exhibits, so I cannot answer that
16 question. It's a question that doesn't make sense
17 to me.

18 MR. BABULA: Let's go on to bio.

19 (Laughter.)

20 HEARING OFFICER CELLI: I'd like to.

21 (Parties speaking simultaneously.)

22 MS. GULESSERIAN: We're going to -- I
23 have no further questions for this witness.

24 HEARING OFFICER CELLI: Okay. Well,
25 this is the last witness on TSE. This was -- and,

1 Ms. Gulesserian, you called this witness so I have
2 to give staff the opportunity to cross --

3 MR. BABULA: No, I'm done with
4 transmission.

5 HEARING OFFICER CELLI: -- and,
6 applicant, any -- applicant, any questions for
7 the --

8 MS. LUCKHARDT: On transmission, no.

9 HEARING OFFICER CELLI: Okay. Then we
10 have no further witnesses, Ms. Gulesserian, on
11 transmission?

12 MS. GULESSERIAN: No, we do not.

13 HEARING OFFICER CELLI: Staff?

14 MR. BABULA: No further witnesses.

15 HEARING OFFICER CELLI: Applicant?

16 MS. LUCKHARDT: No.

17 HEARING OFFICER CELLI: Very good. Then
18 I want to thank Mark Hesters and Sudath, each, for
19 your testimony today. You're dismissed and you're
20 muted.

21 (Laughter.)

22 MS. LUCKHARDT: Do you want to mute
23 Steve Richards, as well, he's --

24 HEARING OFFICER CELLI: Mr. Richards,
25 thanks for your testimony. You are muted, as

1 well.

2 We're going to take a break until 3:15.
3 When we return from the break at 3:15 we are going
4 to deal with biology.

5 (Brief recess.)

6 HEARING OFFICER CELLI: Resume. Now, I
7 may need to -- so we will have an opportunity for
8 the public to comment when we are finished with
9 biology, and hopefully biology won't take that
10 long. The parties --

11 MR. BABULA: There's hazardous, waste
12 and material, too.

13 HEARING OFFICER CELLI: Pardon me?

14 MR. BABULA: We've got hazardous, HTS.

15 HEARING OFFICER CELLI: Okay, okay.
16 Just because the way you were at the mic all I
17 heard was waste, and I thought this is a fine way
18 to talk.

19 (Laughter.)

20 HEARING OFFICER CELLI: Okay, now, so
21 we're going to have public comment probably this
22 evening. The parties estimated an hour and 40
23 minutes at the prehearing conference on biology.
24 At the rate we're going, it's 20 after 3:00, we
25 may go till 4:45 or 5:00 before we even get to

1 public comment.

2 So I hope that's helpful to whoever's in
3 the public who have hung out and listened and want
4 to make public comment. We'll give you that
5 opportunity at the close of the biological
6 resources evidence.

7 So we're now waiting for Ms.
8 Gulesserian. She'll be here in a moment. That
9 hour and 40 minutes, I know, was an ambitious
10 goal. But I'd like to see what we can do to try
11 to stick to that.

12 Now, I -- did we take in -- applicant, I
13 have received the executive summary. I haven't
14 received project description, which may not -- I
15 was just talking to Ms. Gulesserian, and project
16 description may not be at issue.

17 I've received air quality, I'm about to
18 receive biological. We've received all cultural,
19 I believe. Geology. We haven't received
20 hazardous material. We've received hydrology; we
21 received land use; and we've received noise. Yes,
22 noise; paleontology. Public health was received;
23 socioeconomics; soils; traffic and transportation;
24 transmission line safety and engineering; visual.

25 We have not received waste. We have

1 received water. We have -- I don't remember if we
2 took worker safety -- we did receive worker
3 safety; facility design. We have not taken in
4 alternatives yet, because that was disputed, but
5 we're just going to take that up in a moment.

6 And then, staff, we've received 500
7 through 506, which is the sum total of all your
8 exhibits.

9 MR. BABULA: Correct.

10 HEARING OFFICER CELLI: And, CURE, I've
11 received 600 through 638, not including 637,
12 that's pending resolution on that issue. And so
13 that's where we stand with regard to evidence.

14 We're about to begin biology. I
15 received at the beginning -- let me just say that
16 at the prehearing conference the Committee ordered
17 the parties to confirm, we asked them to have a
18 telephone conversation to hammer out any
19 stipulations, changes to conditions of
20 certification that they could come up with.

21 And today I received a --

22 MR. BABULA: Is the tape recorder
23 clicking again?

24 MR. SPEAKER: Yes, it is clicking, but
25 your tape recorder's going.

1 HEARING OFFICER CELLI: But you have
2 another tape recorder going, right? So we're on
3 the air.

4 THE REPORTER: This is backup backup.

5 HEARING OFFICER CELLI: So I have
6 conditions for biological resources that I
7 received this morning. And presumably applicant
8 and staff, because I don't think CURE was involved
9 in any of the disputes with regard to the
10 conditions, worked out some --

11 MR. BABULA: Right, that's the
12 conditions of certification, and that's the final
13 version that we worked out between the staff and
14 the applicant.

15 HEARING OFFICER CELLI: Do you have
16 remaining -- are there --

17 MR. BABULA: We have no other issues
18 with the applicant.

19 HEARING OFFICER CELLI: -- regard to
20 staff and the applicant, as it relates to
21 conditions of certification for biology?

22 MR. BABULA: Correct.

23 HEARING OFFICER CELLI: And what exhibit
24 number is this?

25 MS. LUCKHARDT: That one we've marked or

1 had that one listed as 338.

2 HEARING OFFICER CELLI: 338. Okay. And
3 at this time, Ms. Luckhardt, did you want to put
4 in all of your biological documentary evidence,
5 including exhibit 338, so --

6 MS. LUCKHARDT: Right. And at this time
7 applicant moves exhibit 7, AFC section 5.3;
8 exhibit 35, AFC appendix F; exhibit 36, AFC
9 appendix F, the supporting documentation including
10 attachment G, which is the Mojave Desert Tortoise
11 and Mojave ground squirrel habitat assessment
12 reports.

13 Exhibit 52, the data adequacy
14 supplement; exhibit 59, the summary of pre-
15 application field meeting; exhibit 62, the
16 response to CEC data requests 13 through 16 and 18
17 through 25.

18 Exhibit 71, the streambed alteration
19 agreement; exhibit 73, supplemental responses to
20 CEC data requests 17, 18, and 20, with attachment
21 DR-17. Exhibit 78, revised response to data
22 request 14.

23 Exhibit 79, responses to CEC data
24 requests 71 through 78; exhibit 87, the botanical
25 and wildlife special status species spring survey

1 report. Exhibit 88, the response to California
2 Department of Fish and Game letter on the Beacon
3 Solar Energy project streambed alteration
4 notification.

5 Exhibit 90, supplemental workshop
6 responses to data requests 14, 17 and 20. Exhibit
7 92, the application for the incidental take or
8 threatened endangered species section 2081 permit.
9 Exhibit 110, which is the application for low
10 effects habitat conservation plan.

11 Exhibit 114, the preliminary PSA
12 comments, section 2B; exhibit 129, the PSA
13 comments regarding biological resources; exhibit
14 130, the PSA comments attachment bio-1, the desert
15 tortoise removal plan.

16 Exhibit 131, the PSA comments attachment
17 bio-2, the burrowing owl relocation plan; exhibit
18 151, the common -- monitoring, management and
19 control plan; exhibit 171, the project design
20 refinement section 4.1.2. Correction, that's
21 section 4.1.2.

22 Exhibit 178, the project design
23 refinement section 4.2.2. Exhibit 195, the
24 project design refinements attachment 1-B for the
25 re-routed wash mitigation plan; exhibit 198,

1 project design refinements attachment 4-A.

2 Exhibit 199, project design refinements
3 attachment 4B, which is the desert tortoise
4 survey; exhibit 219 is the 8/1/09 email regarding
5 the Red Rock Poppy from Kenny Stein; exhibit 220,
6 habitat conservation plan.

7 Exhibit 235 is the declaration of Alice
8 Karl on biological resources; exhibit 272, the
9 declaration of Jennifer Guigliano on biological
10 resources; exhibit 277, the declaration of Jim
11 Prine on biological resources; exhibit 282, the
12 declaration of Kenneth Stein on biological
13 resources.

14 Exhibit 288, the declaration of Lyndon
15 Quon on biological resources; exhibit 299, the
16 declaration of Philip Leitner on biological
17 resources; exhibit 325, the rebuttal testimony of
18 Jennifer Guigliano on biological resources;
19 exhibit 326, the rebuttal testimony of Alice Karl
20 on biological resources.

21 Exhibit 327, rebuttal testimony of Philip
22 Leitner on biological resources; exhibit 328,
23 rebuttal testimony of Kenneth Stein on biological
24 resources; and exhibit 338, which is the revised
25 biological conditions of certification, which were

1 agreed to with Commission Staff last week.

2 HEARING OFFICER CELLI: Any objection
3 from CURE?

4 MS. GULESSERIAN: No objection.

5 HEARING OFFICER CELLI: Any objection
6 from staff?

7 MR. BABULA: No objection.

8 HEARING OFFICER CELLI: Thank you. With
9 that the following exhibits marked for
10 identification as 7, 35, 36, 52, 59, 62, 71, 73,
11 78, 79, 87, 88, 90, 92, 110, 114, 129, 130, 131,
12 151, 171, 178, 195, 198, 199, 219, 220, 235, 272,
13 277, 282, 288, 289, 325, 326, 327, 328 and 338 are
14 received into evidence.

15 Please call your first witness.

16 MS. LUCKHARDT: Okay, we have a panel of
17 four witnesses --

18 HEARING OFFICER CELLI: Please stand and
19 be sworn.

20 MS. LUCKHARDT: -- some of whom need to
21 be sworn.

22 HEARING OFFICER CELLI: Yes. All of
23 you, please.

24 MS. LUCKHARDT: Mr. Stein has been
25 previously sworn.

1 Whereupon,

2 KENNETH STEIN

3 was recalled as a witness herein, and having been
4 previously duly sworn, was examined and testified
5 further as follows:

6 Whereupon,

7 JENNIFER GUIGLIANO, ALICE KARL,

8 and PHILIP LEITNER

9 were called as witnesses herein, and after first
10 having been duly sworn, were examined and
11 testified as follows:

12 HEARING OFFICER CELLI: I'm going to ask
13 that you state and spell your name for the record,
14 working this way, with you, ma'am, first.

15 MS. GUIGLIANO: Jennifer Guigliano,
16 G-u-i-g-l-i-a-n-o.

17 DR. KARL: Alice Karl, K-a-r-l.

18 MR. STEIN: Kenny Stein, S-t-e-i-n.

19 DR. LEITNER: Philip Leitner, Philip
20 with one "l", L-e-i-t-n-e-r. Otherwise known as
21 Phil.

22 MR. BABULA: Would you like to have our
23 witnesses sworn in, too? You can get that out of
24 the way.

25 HEARING OFFICER CELLI: Okay, let's --

1 these are staff's witnesses to be sworn.

2 Whereupon,

3 JULIE VANCE, SUSAN SANDERS

4 and JUDY HOHMAN

5 were called as witnesses herein, and after first

6 having been duly sworn, were examined and

7 testified as follows:

8 HEARING OFFICER CELLI: And I'm going to
9 ask you to identify and spell your name for the
10 record, beginning the opposite way. Please go
11 ahead.

12 MS. VANCE: Julie Vance, J-u-l-i-e
13 V-a-n-c-e.

14 HEARING OFFICER CELLI: And you're with?

15 MS. VANCE: Department of Fish and Game.

16 HEARING OFFICER CELLI: Okay.

17 DR. SANDERS: Susan Sanders,
18 S-a-n-d-e-r-s, with the Energy Commission.

19 MS. HOHMAN: Judy Hohman, H-o-h-m-a-n;
20 I'm with the U.S. Fish and Wildlife Service.

21 HEARING OFFICER CELLI: Thank you.
22 Okay, this is applicant -- or, no, this is CURE --
23 remember where we're at.

24 MR. BABULA: It's CURE's burden,
25 actually, because we agreed with that.

1 HEARING OFFICER CELLI: It's CURE's,
2 that's right. And, CURE, you have a witness who
3 needs to be sworn, so let's swear in another
4 witness. Please stand and raise your hand.
5 Whereupon,

6 MICHAEL BIAS
7 was called as a witness herein, and after first
8 having been duly sworn, was examined and testified
9 as follows:

10 HEARING OFFICER CELLI: Please state and
11 spell your name.

12 DR. BIAS: Michael Bias, B-i-a-s.

13 HEARING OFFICER CELLI: Okay. Now in
14 light of the fact that all of the conditions are
15 settled between applicant and staff, what we're
16 dealing with now are challenges to the FSA from
17 CURE. Do I have this right? So, with that, CURE,
18 you'll begin. Call your first witness.

19 MS. GULESSERIAN: Thank you. We call
20 Michael Bias.

21 DIRECT EXAMINATION

22 BY MS. GULESSERIAN:

23 Q Can you please state your name for the
24 record.

25 DR. BIAS: Michael Bias.

1 MS. GULESSERIAN: And whose testimony
2 are you sponsoring today?

3 DR. BIAS: I'm sponsoring Scott Cashen's
4 testimony and my own.

5 MS. GULESSERIAN: Did you, with respect
6 to Scott Cashen's testimony did you independently
7 review all information and documents referenced in
8 Mr. Cashen's sworn testimony?

9 DR. BIAS: Yes.

10 MS. GULESSERIAN: What did you conclude?

11 DR. BIAS: I agree with his findings.

12 MS. GULESSERIAN: Is it based on your
13 own professional judgment -- is your opinion based
14 on your own professional judgment?

15 DR. BIAS: It is.

16 MS. GULESSERIAN: Is it based on facts?

17 DR. BIAS: It is.

18 MS. GULESSERIAN: You're also adopting
19 testimony that is your own today?

20 DR. BIAS: I am.

21 MS. GULESSERIAN: Do you have any
22 changes to your sworn testimony?

23 DR. BIAS: I do. On the second-to-last
24 page -- my page numbers aren't numbered --

25 HEARING OFFICER CELLI: What exhibit are

1 we talking about?

2 MS. GULESSERIAN: We are talking
3 about --

4 HEARING OFFICER CELLI: Also, Mr. Bias,
5 if you could get that mic closer to you. Please
6 give me the exhibit number and the page where --

7 MS. GULESSERIAN: Exhibit 632.

8 DR. BIAS: And it's the second-to-last
9 page, I don't have page numbers on mine. Second
10 full paragraph, first sentence. It reads:
11 Although the Rosamond pipeline alignment study
12 area encompasses 5987 acres, project impact to
13 plant communities were estimated only to be 92.36
14 acres. I mis-wrote that. The 92.36 should be
15 11.2.

16 HEARING OFFICER CELLI: 92.36 should be
17 changed to 11.2.

18 DR. BIAS: 11.2, yes, sir.

19 HEARING OFFICER CELLI: Thank you.

20 MS. GULESSERIAN: Okay, I wanted to see
21 if we can stipulate so I don't need to go through
22 his qualifications?

23 HEARING OFFICER CELLI: Now, Mr. Bias
24 has, what is the exhibit that has Mr. Bias'
25 qualifications on?

1 MS. GULESSERIAN: That is exhibit 635.

2 HEARING OFFICER CELLI: So, since 637 --
3 635 is already in the record, I wonder if we can
4 have a stipulation from the parties that Mr. Bias
5 is qualified as an expert pursuant to that
6 exhibit. Applicant?

7 MS. LUCKHARDT: I would like to better
8 understand Mr. Bias' experience in the desert and
9 with the species at issue in this proceeding.

10 HEARING OFFICER CELLI: You know, I
11 really didn't want to get into this when we had
12 our prehearing conference, I really wanted
13 everybody -- if we had a problem with somebody's
14 expertise, I wanted to hear about that.

15 We have his evidence is in, including
16 his r,sum,. And I think that the understanding
17 would be that the parties would stipulate that he
18 can testify to areas within the expertise as laid
19 out in his r,sum,.

20 Is that acceptable to you?

21 MS. LUCKHARDT: If that is the
22 preference that is acceptable.

23 HEARING OFFICER CELLI: Well, I
24 appreciate that. So stipulated. And, staff?

25 MR. BABULA: That'll be acceptable.

1 HEARING OFFICER CELLI: Okay, thank you.
2 So there's no need to take testimony on it. You
3 are an expert on the areas mentioned in your
4 r, sum,, and so we don't need to cover that ground.
5 And thank you for bringing that up. Appreciate
6 it. Anything we can do to economize we
7 appreciate.

8 MS. GULESSERIAN: Okay. Mr. Bias, can
9 you please summarize your principal findings.

10 DR. BIAS: First the FSA assumes
11 presence of desert tortoise, Mojave ground
12 squirrel and burrowing owls along portions of the
13 23 miles of the Rosamond pipeline alignment.

14 And then based on reconnaissance level
15 surveys of habitat, the presence was based on.
16 However, that FSA's 33-acre compensation
17 requirement is inconsistent with the nearly 4700
18 acres of potential habitat impacted by the
19 project.

20 HEARING OFFICER CELLI: Speak into that
21 mic, if you would, please.

22 DR. BIAS: However, the FSA's 33-acre
23 compensation requirement is inconsistent with the
24 nearly 4700 acres potentially impacted by that
25 project, identified by staff.

1 The FSA fails to provide mitigation for
2 potentially significant impacts to burrowing owls
3 along the 23 miles of the Rosamond pipeline
4 alignment.

5 For Mojave ground squirrels on the
6 project site, the baseline levels for presence of
7 Mojave ground squirrels was not met. Therefore,
8 impact analysis was flawed, such that the
9 mitigation compensation is inadequate with the
10 project site.

11 The same issues apply with desert
12 tortoise, that surveys less than 100 percent
13 protocol surveys were less than adequate to
14 establish baseline. The impact analysis was then
15 flawed. And therefore, mitigation and
16 compensation habitat requirements were inadequate
17 for desert tortoise, as well as burrowing owls.

18 For the project site surveys across
19 three years '07, '08 -- well, three surveys across
20 two years, '07 and '08, detected as many as nine
21 individual owls from the FSA. And the mitigation
22 and compensation ratios are -- the mitigation and
23 compensation is based on two owl pairs.

24 Therefore, the baseline assessment of
25 number of burrowing owls across the project site

1 is inadequate. The impact analysis then is
2 flawed. And also the mitigation and compensation
3 is inadequate.

4 MS. GULESSERIAN: Have you reviewed the
5 FSA's biological resources conditions of
6 certification?

7 DR. BIAS: I have.

8 MS. GULESSERIAN: Have you reviewed the
9 revisions to the conditions that we received on
10 Friday?

11 DR. BIAS: I have.

12 MS. GULESSERIAN: Would you briefly
13 summarize your understanding of those conditions?

14 DR. BIAS: Overall the biological
15 resource conditions require 115 acres of
16 compensation land for desert tortoise and Mojave
17 ground squirrel; 20 acres of compensation land for
18 burrowing owls.

19 This 20 acres may be included within the
20 desert tortoise and Mojave ground squirrel
21 compensation lands.

22 It requires preconstruction clearance
23 surveys. The mitigation and implementation of
24 monitoring program, which it requires and has not
25 yet been prepared, and 33 acres of compensation

1 land for desert tortoise and Mojave ground
2 squirrel as part of the Rosamond pipeline, is
3 required under the COCs and other measures, such
4 as designated biologists and biological monitoring
5 and the like.

6 HEARING OFFICER CELLI: You said is or
7 is not required?

8 DR. BIAS: They are required.

9 HEARING OFFICER CELLI: Okay. The
10 conditions of certification require the mitigation
11 for the pipeline?

12 DR. BIAS: Correct.

13 HEARING OFFICER CELLI: Okay.

14 MS. GULESSERIAN: Based on your final
15 conclusions you've just articulated, and your
16 understanding of those conditions, would the
17 conditions address your findings and your
18 conclusion?

19 DR. BIAS: No.

20 MS. GULESSERIAN: Can you explain to us
21 why?

22 DR. BIAS: Yeah. Bio-11, desert
23 tortoise and Mojave ground squirrel compensatory
24 mitigation. Under California Endangered Species
25 Act, these mitigation compensation is required to

1 fully mitigate for habitat loss and potential
2 take.

3 The amount of potential habitat for
4 Mojave ground squirrel on the project site, as
5 calculated by the applicant, is 429.5 acres of
6 desert shrub scrub, vegetation types.

7 For Mojave ground squirrel also simply
8 the only habitat assessment that was conducted,
9 although not required, was essentially two one-day
10 surveys; one conducted in August and one conducted
11 in November. Outside, in fact, the appropriate
12 recommended time for visual surveys for Mojave
13 ground squirrels, which is 15 March to April 15.

14 And finally, under bio-11, for the
15 project site the 115 acres for Mojave ground
16 squirrel and desert tortoise is essentially one
17 quarter of the 429.5 acres of desert scrub that
18 will be lost.

19 For desert tortoise on the project site,
20 the FSA, less than protocol level surveys were
21 conducted for desert tortoise. They, -- in fact,
22 applicant, in an FSA, detected, in fact, juvenile
23 carcasses deteriorated adult burrow. And at least
24 two other sets of bones and carapace fragments,
25 indicating the presence of at least three desert

1 tortoise onsite, showing presence.

2 And mitigation and compensation
3 requirements under bio-11 stipulated for only two
4 desert tortoise.

5 Bio-17, which is the impact, avoidance,
6 minimization and compensation requirements,
7 requires that the owner follow measures to avoid
8 and offset impacts to burrowing owls.

9 Three surveys across two years, well,
10 two surveys across two years and incidental
11 observation showed on the project site that at
12 least nine individual owls were detected.

13 As such, under the COC compensation is
14 requiring compensation for only two pairs of
15 burrowing owls, and it's therefore insufficient
16 mitigation to offset the impacts to burrowing owls
17 to a less than significant level.

18 Bio-21 is the Rosamond pipeline
19 mitigation. For this the desert tortoise and
20 Mojave ground squirrel presence was assumed. But
21 the habitat analysis along the line shows that
22 only 11 acres of impact would occur when nearly
23 over 4700 acres of potentially -- of habitat can
24 be potentially impacted.

25 According to the applicant's

1 biotechnical report, especially in deserts,
2 indirect impacts can often be considered permanent
3 because of the long time that it takes desert
4 ecosystems to recover.

5 Finally, I think bio-21 does not
6 adequately address the loss of burrowing owls or
7 their habitat based simply on clearing surveys as
8 mitigation.

9 MS. GULESSERIAN: Can you clarify when
10 you referred to condition of certification bio-21,
11 Rosamond pipeline mitigation. Does that condition
12 apply to the 40-mile pipeline, or to something
13 different?

14 DR. BIAS: The bio-21 applies to the 23-
15 mile segment of the Rosamond pipeline alignment.

16 MS. GULESSERIAN: Okay, thank you. I
17 have no further questions.

18 HEARING OFFICER CELLI: Staff, cross?

19 MR. BABULA: Just a couple questions.
20 We won't get into mitochondrial DNA of tortoises.

21 CROSS-EXAMINATION

22 BY MR. BABULA:

23 Q Have you been to where the pipeline
24 routes, have you driven the routes where the
25 proposed pipelines are going to be?

1 DR. BIAS: I saw where they were.

2 MR. BABULA: Okay.

3 DR. BIAS: In other words, driving
4 around near the project site.

5 MR. BABULA: And can you describe how it
6 looks from a habitat perspective, for the actual
7 pipeline on the road shoulder?

8 DR. BIAS: Well, the road shoulders are
9 essentially gravels and weeds. And then sloped
10 toes.

11 MR. BABULA: Would you consider that
12 habitat?

13 DR. BIAS: Well, it's habitat for
14 something. Is it habitat for Mojave ground
15 squirrels or desert tortoise? If the action area
16 for a linear project is the alignment plus 2400
17 feet on either side, you have to consider all
18 impacts and all habitat.

19 So, probably the immediate road shoulder
20 would not be desert tortoise habitat. However, I
21 can't say if they don't burrow at roadsides.
22 Certainly burrowing owls burrow at roadside. We
23 haven't looked for Mojave ground squirrels or
24 desert tortoise along the alignment.

25 MR. BABULA: Okay. I have a question

1 that's a little baffling. Now, you described the
2 project site as having a juvenile carcass, some
3 bone fragments. Okay, so that is --

4 DR. BIAS: I didn't --

5 MR. BABULA: -- that's what the --

6 DR. BIAS: -- describe the site as that.

7 MR. BABULA: That was the testimony from
8 the applicant in their surveys.

9 DR. BIAS: Correct.

10 MR. BABULA: Okay. And I want to ask
11 you, and I note in your testimony and in Scott
12 Cashen's testimony there's some issue between your
13 feeling of the habitat, sort of what the level of
14 habitat on the site versus what the applicant, how
15 they may characterize it.

16 So giving you a hypothetical here, look
17 at the Ridgecrest Project.

18 MS. GULESSERIAN: Objection, we're not
19 working on the Ridgecrest Project right now.

20 MR. BABULA: Well, it's a hypothetical
21 to try to juxtapose --

22 HEARING OFFICER CELLI: Let's just, one
23 thing, let's everyone be conscious of the fact
24 that only one person --

25 MR. BABULA: This is my last question.

1 HEARING OFFICER CELLI: -- only one
2 person --

3 (Laughter.)

4 HEARING OFFICER CELLI: -- may talk at a
5 time because if two people are talking --

6 MR. BABULA: Right.

7 HEARING OFFICER CELLI: -- we can't get
8 a good transcript. So that's one thing I'm going
9 to ask you to be conscious of.

10 The other thing is we'll allow a
11 hypothetical question.

12 MR. BABULA: Okay. Ridgecrest --
13 (inaudible), the same company that's doing the
14 surveys here, they went out to Ridgecrest and 50
15 tortoises were found, 40 on the project site,
16 similar acreage.

17 If the habitat on the Beacon site is
18 tortoise habitat to some extent, where are the
19 tortoises? It's not like they scatter when you
20 show up.

21 DR. BIAS: Yeah, that's a good question.
22 However, that's not what the protocol surveys are
23 meant to figure out. In fact, my feeling on what
24 habitat for desert tortoise looks like or is,
25 doesn't enter into the question.

1 My assessment on habitat quality or
2 whether it's good or whether it's bad is not a
3 question. The question that protocol level
4 surveys in projects like this are meant to address
5 is, is that habitat potentially can desert
6 tortoises occur within that habitat. Protocol
7 level surveys attempt to answer that.

8 And then from those surveys we derive a
9 number. And as far as sign, you know, burrows,
10 scat, fragments of animals is all sign, carcasses.
11 Whether it's dead or alive it's still present
12 onsite.

13 HEARING OFFICER CELLI: Mr. Bias, if you
14 wouldn't mind just turning the mic -- yes, thank
15 you.

16 MR. BABULA: I've got one more question.
17 What do you mean by 4000 acres of impact are along
18 the pipeline?

19 DR. BIAS: In the FSA, I'm trying to
20 recall the map alignments and the table numbers.
21 They did a fix with transect at 1000 feet. And
22 identified vegetation types from the pipeline
23 alignment out 1000 feet entirely along the 23
24 miles.

25 And there's a table in the analysis that

1 quantifies those vegetation types. And then
2 there's a following table, so this is a 2000-foot,
3 23-mile long map that essentially comes out to
4 4784 acres of those scrub habitat sites.

5 It was atroplex shrub scrub and creosote
6 shrub scrub and the like. Which actually the 1000
7 foot is about 1400 foot off what it should have
8 been for a linear habitat assessment for desert
9 tortoise, which is 2400 feet.

10 So essentially that banded width
11 transect, that 23 miles, if protocol level surveys
12 were followed, should have been 4800 feet wide and
13 23 miles long, which is nearly 10,000 acres.

14 MR. BABULA: Okay, thank you. I'll let
15 our staff deal with that on direct. No further
16 questions.

17 HEARING OFFICER CELLI: Anything
18 further? Thank you. Applicant, questions of this
19 witness?

20 MS. LUCKHARDT: Sure.

21 CROSS-EXAMINATION

22 BY MS. LUCKHARDT:

23 Q You started off your discussion today
24 talking about the requirements that are contained
25 in the California Endangered Species Act. Isn't

1 it true that the California Endangered Species Act
2 requires mitigation for take of species and not
3 habitat?

4 DR. BIAS: Depends on which animal. If
5 we talking desert tortoise it's requiring it for
6 the tortoise. If we're talking --

7 MS. LUCKHARDT: I'm referring to the
8 California Endangered Species Act.

9 DR. BIAS: And that's what I'm referring
10 to.

11 MS. LUCKHARDT: Okay.

12 HEARING OFFICER CELLI: So the testimony
13 is that the California Endangered Species Act
14 requires take of habitat for, you said, tortoise?

15 DR. BIAS: Well, any --

16 MS. GULESSERIAN: This is -- I would
17 just object because this is a legal question that,
18 you know, this is not a lawyer, he's a biologist.

19 MS. LUCKHARDT: Well, had he not
20 testified to it initially I would not have asked
21 the question. But he presented it in some of his
22 opening remarks, and so I think that opens him up.

23 HEARING OFFICER CELLI: It's a fair area
24 for cross. And all I was trying to do was get a
25 clarification on his answer.

1 DR. BIAS: Bio.

2 HEARING OFFICER CELLI: And I'm going to
3 ask you again to take that mic and put it right in
4 front of you like this. See how I have it, like
5 I'm talking right now --

6 DR. BIAS: I get that, yeah.

7 HEARING OFFICER CELLI: That's what you
8 want to do.

9 MS. LUCKHARDT: And, Mr. Bias, is it
10 your testimony that the 23-mile pipeline between
11 the project site and Rosamond has not been subject
12 to protocol surveys?

13 DR. BIAS: Yes.

14 MS. LUCKHARDT: And is it your testimony
15 that the project site, itself, has not been
16 subject to protocol desert tortoise surveys?

17 DR. BIAS: Yes.

18 MS. LUCKHARDT: And, Mr. Bias, when was
19 the first time you visited the site?

20 DR. BIAS: Yesterday.

21 MS. LUCKHARDT: And did you drive around
22 the site?

23 DR. BIAS: I drove along the highway and
24 the frontage road, private land that's out there.

25 MS. LUCKHARDT: So you haven't walked

1 along the site, across the site, --

2 DR. BIAS: No.

3 MS. LUCKHARDT: -- in the different
4 areas? So it's your analysis essentially that you
5 prefilled based only on reading the evaluations
6 that were conducted?

7 DR. BIAS: No. I looked at -- I've been
8 working with -- I've been working on Beacon since
9 December '08. And looking at all the data
10 requests, the application for certification. And
11 also satellite images, Google Earth, goes back in
12 time now to, I think their earliest satellite
13 image was '94. So I looked at aerial imagery at
14 the site.

15 MS. LUCKHARDT: Dr. Bias, you quote
16 reports from authors on food preferences of the
17 Mojave ground squirrel, correct?

18 DR. BIAS: Correct. Well, no. I quote
19 author studies on food habits and some dietary
20 analyses. Food preferences are another level
21 beyond just deciding what the animal has to eat at
22 a particular time.

23 MS. LUCKHARDT: Okay, so it's dietary
24 analysis for the Mojave ground squirrel, is that a
25 better --

1 DR. BIAS: The only dietary --

2 MS. LUCKHARDT: -- way to put it?

3 DR. BIAS: The only dietary analyses
4 that was done was Leitner's work. Dietary
5 analyses involves detailed looking at what the
6 animal's eaten and what you can detect on what
7 comes out, whether it's fecal analysis, pellet
8 analysis for owls, things like that.

9 And dietary analyses that were done have
10 within them their own flaws such as depending on
11 the cell wall of the plant, might not make it
12 completely through the gut. So if you're trying
13 to decide what the animal's eaten based on fecal
14 analysis your results will be biased because only
15 certain plants pass completely through the gut
16 based on cell walls and how the cells are.

17 MS. LUCKHARDT: Okay, on the bottom of
18 page 2 of your testimony you refer to a study of
19 Zembal and Gall, 1980. Showed that Mojave ground
20 squirrels preferred seeds from Joshua trees.

21 DR. BIAS: Right. That was their work.
22 And they looked at that.

23 MS. LUCKHARDT: Are there Joshua trees
24 on this site?

25 DR. BIAS: I don't think so. But wasn't

1 there a report somewhere there might be an
2 occurrence -- one or two of them in the wash,
3 along the wash?

4 MS. LUCKHARDT: You can't ask me
5 questions --

6 (Laughter.)

7 DR. BIAS: Well, I don't know for sure.

8 MS. LUCKHARDT: Okay. Isn't it your
9 contention that the Mojave ground squirrel does
10 not need a variety of plant species?

11 DR. BIAS: For what?

12 MS. LUCKHARDT: For it's lifecycle.

13 DR. BIAS: I can't answer that. Depends
14 on where you're at. Some of the areas that Phil
15 Leitner looked at had squirrels occurring and even
16 eating in areas that only had a couple plants.

17 So food that they're eating, they might
18 -- the can and have been eating one or two plants.
19 But they might be living in areas where more than
20 two, but only eating two.

21 MS. LUCKHARDT: You quote on page 2 a
22 study by -- and I may totally mispronounce this
23 name, it's R-e-c-h-t, Recht?

24 DR. BIAS: Right.

25 MS. LUCKHARDT: 1977.

1 DR. BIAS: That's right.

2 MS. LUCKHARDT: And isn't it true, and
3 based on your testimony you're saying that it
4 reported that the species of plant selected by the
5 squirrel change throughout the season?

6 DR. BIAS: Correct. It was a -- Recht
7 showed a dietary shift, that they were switching
8 from one plant that they were eating solely, to
9 another plant later on in the season.

10 MS. LUCKHARDT: And on page 3 you
11 reference a study by Dr. Leitner. And you said
12 that fecal samples were dominated by a single food
13 source, is that correct?

14 DR. BIAS: I just cited his study. He
15 said that.

16 MS. LUCKHARDT: Then maybe I'm
17 misunderstanding your testimony.

18 DR. BIAS: I'm saying in that section
19 that Dr. Leitner studied food habits of Mojave
20 ground squirrel and found some that ate only a
21 single item of food.

22 HEARING OFFICER CELLI: And what exhibit
23 page number was --

24 MS. LUCKHARDT: I'm looking at exhibit
25 -- I'm looking at Dr. Bias' testimony exhibit 632,

1 page 3.

2 HEARING OFFICER CELLI: Thank you.

3 MS. LUCKHARDT: Isn't it correct that a
4 fecal sample would show what one squirrel ate for
5 one day?

6 DR. BIAS: I don't know the passage
7 rates of the Mojave ground squirrels that he
8 looked at. Diets based on fecal analyses can be
9 pretty detailed. And there's a lot that needs to
10 be considered. How much they're eating; how
11 quickly they pass; water content of the material
12 they're eating; and how often they defecate.

13 MS. LUCKHARDT: But you're not saying
14 that you have your own knowledge about how that
15 happens --

16 DR. BIAS: No.

17 MS. LUCKHARDT: -- in a Mojave ground
18 squirrel?

19 DR. BIAS: No.

20 MS. LUCKHARDT: Okay. On pages 7 and 8
21 of your testimony you criticize reliance upon
22 trapping data, is that a correct understanding of
23 what you're --

24 DR. BIAS: Yes.

25 MS. LUCKHARDT: -- saying there?

1 DR. BIAS: Yes, ma'am.

2 HEARING OFFICER CELLI: I'm just going
3 to make an observation that it's about almost five
4 minutes after 4:00. We've got a few witnesses to
5 go through it appears, so do you have any more
6 questions you --

7 MS. LUCKHARDT: You know what, I think
8 I'll stop there. Thank you.

9 HEARING OFFICER CELLI: Okay. Staff's
10 already crossed, so any redirect now of Mr. Bias
11 by CURE?

12 REDIRECT EXAMINATION

13 BY MS. GULESSERIAN:

14 Q When you were summarizing the staff's
15 conditions of certification and you referred to
16 their language regarding fully -- they are
17 required to fully mitigate for Mojave ground
18 squirrel and desert tortoise, were you referring
19 to the requirement in the California Department of
20 Fish and Game Code, which includes the California
21 Endangered Species Act?

22 DR. BIAS: I was referring to the bio-11
23 condition, itself, that quotes project fully
24 mitigate for habitat loss and potential take of
25 desert tortoise and MGS.

1 MS. GULESSERIAN: Thank you.

2 DR. BIAS: And then Mojave ground
3 squirrel.

4 MS. GULESSERIAN: No further questions.

5 HEARING OFFICER CELLI: Recross by
6 staff?

7 MR. BABULA: No further.

8 HEARING OFFICER CELLI: Recross by
9 applicant?

10 MS. LUCKHARDT: No.

11 HEARING OFFICER CELLI: Thank you, Mr.
12 Bias. Your next witness, Ms. Gulesserian.

13 MS. GULESSERIAN: No further witnesses.

14 HEARING OFFICER CELLI: Thank you. I
15 guess we'll go with staff next. He's pointing
16 over to applicant.

17 (Laughter.)

18 HEARING OFFICER CELLI: Okay. Ms.
19 Luckhardt.

20 MS. LUCKHARDT: I doubly pass the buck.

21 HEARING OFFICER CELLI: Did you want to
22 proceed as a panel? Whatever makes most sense to
23 you. Obviously it's clearer on the record if
24 we're asking one witness one question and
25 everybody's going back and forth to one witness.

1 Unless you think it would be more
2 efficient to go by way of a panel.

3 MS. LUCKHARDT: I have them as a panel.
4 There was some cross-over work between some of the
5 witnesses, and so it may be important to have them
6 go as a panel, just because of the work that was
7 done --

8 HEARING OFFICER CELLI: That's fine.

9 MS. LUCKHARDT: -- and how it was done.

10 HEARING OFFICER CELLI: We can do that.
11 And my request to you and to -- so each of the
12 panel members, please remember to state your name
13 prior to any answer that you give.

14 And then, attorneys, if you would please
15 direct specific questions to specific witnesses.
16 In this way we can keep the record clear as to
17 who's saying what, who's responding to what
18 question.

19 So, with that, go ahead, Ms. Luckhardt.

20 MS. LUCKHARDT: Okay, and at this point
21 I'm going to generally dispense with the usual
22 formalities of are your qualifications attached to
23 an exhibit, or do you want me to go through that?

24 HEARING OFFICER CELLI: You don't need
25 to. I think that we have no discussion here about

1 qualifications of these witnesses. We have
2 everybody's r, sum, on file, do we not? They're
3 all --

4 MS. LUCKHARDT: Yes, you do.

5 HEARING OFFICER CELLI: It's been
6 received. So, everybody is an expert in whatever
7 they're expert in.

8 MS. LUCKHARDT: Okay. Then what I'd
9 like to do is have Mr. Stein provide just a quick
10 overview of the project and its components, since
11 there's been some discussion about water pipelines
12 and different things like that, to get you
13 oriented on the project and the different areas.
14 So that when we talk about surveys you'll
15 understand where we're talking about.

16 HEARING OFFICER CELLI: So this is a
17 brief overview?

18 MS. LUCKHARDT: This is a --

19 MR. STEIN: Extremely brief.

20 HEARING OFFICER CELLI: Very brief.

21 MS. LUCKHARDT: -- brief overview. And
22 what you are looking at is, Mike, is that --

23 HEARING OFFICER CELLI: I know I've seen
24 this before.

25 MS. LUCKHARDT: It is, it's the --

1 HEARING OFFICER CELLI: In the AFC.

2 MS. LUCKHARDT: It's from a spring
3 survey report. Okay, it's exhibit 87, and the
4 figure number -- figure 2.

5 DIRECT EXAMINATION

6 MR. STEIN: Okay, well, Kenny Stein. I
7 agree, we really shouldn't have to spend too much
8 time on biology. We think that there really
9 aren't any biological issues with the project.

10 A reminder that here's the outline of
11 the plant site. The entire 2012-acre site is
12 highly disturbed from previous farming activities.
13 You all saw some of the photographs from the
14 earlier visual presentation.

15 And it's also got quite a bit of
16 disturbance in the general area. You've got the
17 Honda Test Track over here. You've got highway 14
18 coming along here. And you've got a transmission
19 line corridor here.

20 Just generally speaking, so that we're
21 all oriented to the site, again the plant site's
22 here; the transmission line runs down here. This
23 is the interconnection to the Barren Ridge
24 Substation.

25 Here is, you can't see the whole thing,

1 but this is where we had surveyed for a gas
2 pipeline, but it's now where the water pipeline to
3 California City would come from.

4 If you could, Mike, go to the next
5 figure. Just, again, --

6 MS. LUCKHARDT: And when you say survey,
7 are you referring to protocol desert tortoise
8 surveys?

9 MR. STEIN: Yes, all protocol desert
10 tortoise surveys. It's not a pristine desert
11 environment. You've heard that before. It's
12 exactly the type of site that the resource
13 agencies have been encouraging solar development
14 on.

15 As we put in the record, we've got
16 preeminent experts here that you'll hear from,
17 that have concluded that the entire plant site is
18 not suitable habitat for any listed species,
19 including desert tortoise or the Mojave ground
20 squirrel. And the resource agencies have done
21 their own independent analysis and have concurred
22 with that.

23 I'd like to point out that in the two
24 years of these proceedings there hasn't been a
25 single environmental group that has commented that

1 the assessment for biological resources has been
2 in any way inadequate, or the mitigation proposed.

3 So, with that, I'll turn it back over.

4 MS. LUCKHARDT: Okay, great. Thank you
5 very much. And turning to Dr. Leitner. Your role
6 in this project has been to focus on the impacts
7 to the Mojave ground squirrel, is that correct?

8 DR. LEITNER: Yes, that's correct. Have
9 I got this close enough?

10 HEARING OFFICER CELLI: Yes.

11 (Laughter.)

12 DR. LEITNER: Okay.

13 MS. LUCKHARDT: Excellent. And just
14 quickly, how long have you been studying the
15 Mojave ground squirrel?

16 DR. LEITNER: Well, best I can
17 recollect, in May it will be 31 years.

18 MS. LUCKHARDT: Thank you. And
19 you're --

20 HEARING OFFICER CELLI: That's about as
21 much as we need to know about his expertise.

22 DR. LEITNER: Okay.

23 HEARING OFFICER CELLI: Let's move on.

24 MS. LUCKHARDT: Can you describe the
25 basic biology and lifecycle of the Mojave ground

1 squirrel?

2 DR. LEITNER: Yeah, I'll try to keep
3 this brief, but it's an unusual animal and some of
4 the features of its lifecycle, I think, are
5 relevant to understanding why the plant site is
6 not suitable habitat for it.

7 They spend about half of the year
8 underground sleeping. They come out in early
9 spring, February. Mate in late February. The
10 young are born end of March, early April. The
11 females are lactating and supporting the young
12 until about early May. The young become
13 independent toward the end of May. And many of
14 them actually disperse, go off to seek their
15 fortune elsewhere, and can move some distance, up
16 to several kilometers from where they're born.

17 At that point everybody has to start
18 putting on weight. They may double their body
19 weight so that they have enough fat stored up to
20 get through the next six months. By the middle of
21 summer most of them are asleep, underground in
22 their burrows.

23 And one of the reasons, only one of the
24 reasons that this plant site, even areas where
25 there are some saltbush plants that have regrown

1 after the alfalfa farming was discontinued, even
2 in those areas where there are some shrubs, the
3 habitat does not really provide the food resources
4 that the animals need.

5 Since they're coming out in early
6 spring, in February, the herbaceous plants are not
7 up yet. And they're not available as food. And
8 so shrub foliage, particular species of shrubs are
9 important to get the animals going.

10 After a good rainfall winter the annuals
11 begin coming up later in March; and they reach a
12 peak in April. And at that time when the females
13 are supporting the young, lactating, they have
14 maximum caloric needs and needs for moisture.
15 They rely on these herbaceous plants, native
16 plants that, you know, we think of as the desert
17 wildflowers.

18 In May, as it gets hotter, those annual
19 plants begin to dry up and the squirrels have to
20 go back to feeding on shrub foliage and the seeds
21 that they can obtain.

22 So in order for a site to support a
23 population it's got to have a variety of different
24 plants that will provide for the squirrels through
25 the season.

1 And the study, for example, by Dr.
2 Recht, where he observed them feeding on shrub
3 leaf early in the season, then turning to
4 wildflowers, basically corroborates my view. His
5 study was based on watching squirrels and seeing
6 what they ate. And may have missed something, but
7 the basic pattern is the same that I've found
8 through these microscopic studies of what comes
9 through after the squirrels have eaten.

10 So, that's the basic features of the
11 lifecycle and kind of indicates why you need a
12 site to support these animals that has a variety
13 of native plant species.

14 Even the shrub area on the Beacon site
15 has got one species of saltbush and a couple of
16 invasive exotic annual plants, biliary and
17 Mediterranean grass, and it really does not
18 provide the variety of food resources that would
19 be needed to support a population.

20 On the other hand, we saw the map that
21 showed the transmission line corridor west of
22 highway 14. And that area is creosote bush scrub,
23 relatively undisturbed. And it supports a variety
24 of shrubs and native herbaceous plants.

25 And when I did my habitat assessment I

1 found the features there that would support the
2 species; and I recommended the applicant assume
3 that the species was present there.

4 On the plant site, itself, my evaluation
5 was that it did not have the resources necessary
6 to support the species.

7 MS. LUCKHARDT: Thank you. And Dr. Bias
8 mentions a requirement that is based upon a 2003
9 California Department of Fish and Game document
10 for conducting Mojave ground squirrel surveys and
11 the habitat definitions.

12 You didn't recommend surveys for this
13 site. Is it required under that 2003 California
14 Department of Fish and Game?

15 DR. LEITNER: Again, I think it's
16 important to consider the transmission line
17 corridor portion of the project site that's west
18 of 14. In that situation of the habitat there was
19 Mojave creosote bush scrub. If the applicant had
20 not chosen to assume presence, then surveys would
21 have been required.

22 However, the plant site, most of it is
23 barren. There's no vegetation to speak of at all.
24 There's a part that supports some saltbush plants,
25 and that is not a natural community. It's not the

1 Mojave saltbush scrub as described in the
2 guidelines. And it's simply not a natural
3 community and would not require surveys.

4 MS. LUCKHARDT: And those guidelines
5 refer to habitat definitions. Does the plant site
6 meet that habitat definition?

7 DR. LEITNER: No, it does not. Even the
8 part that has regrowth of saltbush, if you look at
9 the publication by Holland 1986 that's cited in
10 the guidelines, you look at the way that Holland
11 describes Mojave saltbush scrub, this says, okay,
12 maybe strongly dominated by saltbush species, but
13 then lists a large number of other native species
14 that would be expected to occur, they aren't there
15 on the plant site in that saltbush area.

16 MS. LUCKHARDT: So it's your conclusion
17 that the habitat that's described by Holland and
18 referenced in the 2003 guidelines is not present
19 on the plant site?

20 DR. LEITNER: That's correct. I've been
21 a member of the Technical Advisory Group that
22 makes recommendations to the Department of Fish
23 and Game regarding the species since the Technical
24 Advisory Group was formed about ten years ago. I
25 was involved in the 2003 revision of the

1 guidelines, and we've never had any concept that
2 anybody would try to describe vegetation such as
3 occurs on the plant site as being native desert
4 scrub that would need to be surveyed.

5 MS. LUCKHARDT: And are you aware of
6 trapping studies on abandoned ag land?

7 DR. LEITNER: Yes. The sort of saltbush
8 regrowth that you find on part of the Beacon site
9 is pretty typical for areas in the western Mojave
10 that have been used for production of alfalfa and
11 then abandoned.

12 And there have been some protocol
13 trapping studies for Mojave ground squirrel in
14 these areas. I'm aware of at least three areas
15 where that has been done. In all three cases
16 Mojave ground squirrel are known to occur within a
17 few miles of those sites in native scrub
18 vegetation. But no one has yet trapped a Mojave
19 ground squirrel in that kind of vegetation.

20 MS. LUCKHARDT: And what about the
21 studies that Dr. Bias refers to from Ardal and
22 Roush and Westman to demonstrate the Mojave ground
23 squirrel have been found in areas dominated by
24 atroplex?

25 DR. LEITNER: Yeah, atroplex or

1 saltbush. Yeah, those trapping studies, some of
2 them were conducted on sites that were described
3 as saltbush scrub. And Mojave ground squirrels
4 were trapped.

5 However, for example I've been, within
6 the last month, I think it was March 2nd, I was at
7 two of the Ardal and Roush saltbush sites in
8 Superior Valley north of Barstow taking some
9 people from USGS out to look at habitat where
10 Mojave ground squirrels occur.

11 We got out of the truck, walked around.
12 And within five minutes we had found at least half
13 a dozen other species of native shrubs, including
14 ones winterfat and spiny hop-sage that are favored
15 by Mojave ground squirrels.

16 So, although the site was described as
17 saltbush scrub, it was, in fact, a diverse
18 community dominated by saltbush. And you do find
19 Mojave ground squirrels in those areas.

20 But that has nothing to do with this
21 vegetation that occurs on the site.

22 By the way, I also trapped the same
23 Ardal and Roush sites in 2002, caught Mojave
24 ground squirrels there. But that's real native,
25 undisturbed saltbush scrub.

1 MS. LUCKHARDT: And, Dr. Leitner, in
2 your opinion from the perspective of Mojave ground
3 squirrel conservation, is this a good site for
4 solar development in the desert?

5 DR. LEITNER: Well, as some of the folks
6 in this room know, for several years I have been
7 attempting to persuade anyone who would listen,
8 and even if they don't listen I'll still say it,
9 persuade folks that the most appropriate places
10 for solar development in the Mojave Desert are
11 sites like the Beacon site that have been
12 previously disturbed.

13 There's a lot of former ag land like
14 this. I think this is really, you know, we need
15 solar energy. But we also need to minimize the
16 impact to native species, native ecosystems. And
17 this is the ideal way to do it, in my opinion.

18 MS. LUCKHARDT: And in your opinion is
19 the proposed 100 acres for the plant site, not the
20 whole 115 including the transmission line, but the
21 100 acres for the plant site sufficient to
22 mitigate for plant site impacts to Mojave ground
23 squirrel?

24 DR. LEITNER: Yes, I believe it's quite
25 a generous approach to mitigation. And on the --

1 because I mentioned that young ground squirrels
2 can disperse from where they're born, they can
3 wind up in places where they're just passing
4 through; they're transient.

5 And because there is habitat adjoining
6 the site that could possibly support a population,
7 you could have young animals temporarily moving
8 through the site. And there's a very small
9 possibility that take could occur.

10 So while we could have said, well, this
11 is not habitat, doesn't support Mojave ground
12 squirrels, therefore no mitigation is required.
13 Instead we decided to take account of the
14 possibility that there could be a small amount of
15 incidental take. And then tried to work out a way
16 to mitigate for that.

17 And so I believe it's reasonable to
18 assume that those 100 acres could support actual
19 reproductive population, not just transients, but
20 could actually benefit the species to a great
21 extent, and more than fully compensate for loss of
22 one or two individuals.

23 MS. LUCKHARDT: Thank you. And turning
24 to Dr. Karl --

25 HEARING OFFICER CELLI: You know, I

1 wonder if it's appropriate to give the parties an
2 opportunity to cross Dr. Leitner at this time
3 or --

4 MS. LUCKHARDT: That's fine.

5 HEARING OFFICER CELLI: Just to kind of
6 put closure on that testimony, I just think --

7 MS. LUCKHARDT: The Mojave ground
8 squirrel? Good.

9 HEARING OFFICER CELLI: Yeah. Ms.
10 Gulesserian, any cross of Dr. Leitner?

11 MS. GULESSERIAN: Yes, I have cross, and
12 just contemplating the presentation of the panel
13 while crossing them individually.

14 HEARING OFFICER CELLI: I thought, since
15 he's spoken at such length that I would, before we
16 lose it, --

17 MS. GULESSERIAN: Yeah, it's true. I
18 think I will not be able to conclude my cross. I
19 might have an additional question after I hear
20 from the rest.

21 CROSS-EXAMINATION

22 BY MS. GULESSERIAN:

23 Q Dr. Leitner, is it true that the
24 California Department of Fish and Game Mojave
25 ground squirrel guidelines require a survey to be

1 undertaken for Mojave ground squirrel on a project
2 site if the proposed site has potential habitat of
3 this species, and the presence of the species on
4 the site is unknown?

5 MS. LUCKHARDT: Can you please refer to
6 the exhibit number of that document so he can have
7 it in front of him.

8 HEARING OFFICER CELLI: Also you may
9 want to break that up into bite-size pieces.
10 There were about three questions --

11 MS. GULESSERIAN: He has testified about
12 the Mojave ground squirrel guidelines and when
13 they require --

14 MS. LUCKHARDT: And I believe that
15 you've got it in one of your exhibits. And I just
16 would like to have that out in front of him.

17 HEARING OFFICER CELLI: We have a
18 representative from CDFG --

19 MS. GULESSERIAN: We have.

20 HEARING OFFICER CELLI: -- who can
21 probably blurt it right out.

22 MS. GULESSERIAN: Exhibit 603.

23 HEARING OFFICER CELLI: We're looking
24 for guidelines?

25 MS. GULESSERIAN: It's exhibit 603.

1 MS. LUCKHARDT: Okay, we've got it,
2 thank you.

3 MS. GULESSERIAN: Okay.

4 MS. LUCKHARDT: It's exhibit 603.

5 HEARING OFFICER CELLI: Could you
6 restate the question, please.

7 MS. GULESSERIAN: Sure. Do the
8 guidelines require surveys to be undertaken for
9 Mojave ground squirrel if there's potential
10 habitat on the site?

11 DR. LEITNER: If there is potential
12 habitat and it's within the range of the squirrel,
13 then surveys are required. However, the applicant
14 has the option of assuming presence.

15 MS. GULESSERIAN: Okay. And in this
16 case did the applicant assume presence?

17 DR. LEITNER: The applicant assumes
18 presence on the area, the transmission west of
19 highway 14, where there was potential habitat.

20 MS. GULESSERIAN: Did they assume
21 presence on the project site?

22 DR. LEITNER: No.

23 MS. GULESSERIAN: Okay, so is it also
24 true that potential habitat is defined as land
25 supporting desert shrub vegetation within or

1 adjacent to the geographic range of the species?

2 DR. LEITNER: Yes.

3 MS. GULESSERIAN: Is it true that a
4 project is an action that results in temporary or
5 permanent removal or degradation of potential
6 habitat?

7 DR. LEITNER: That's what it says.

8 MS. GULESSERIAN: Okay. Is it true that
9 no surveys were done because you've suggested the
10 site has no potential habitat?

11 DR. LEITNER: The site, that is correct,
12 the site does not have potential habitat for the
13 species.

14 MS. GULESSERIAN: Okay, so surveys were
15 just --

16 DR. LEITNER: That's the power plant
17 site.

18 MS. GULESSERIAN: We've eliminated
19 surveys from this project site based on just
20 saying there's no potential habitat on the site?
21 That's what happened?

22 DR. LEITNER: Based upon habitat
23 assessment.

24 MS. GULESSERIAN: Okay. You talked
25 about, in your presentation, that potential

1 habitat is defined by Fish and Game as land
2 supporting desert shrub vegetation within or
3 adjacent to the geographic range of the species.

4 And then you went on to further define
5 what desert shrub vegetation by referring to
6 Holland and Knight?

7 DR. LEITNER: Yes. In the guidelines
8 there's a footnote --

9 MS. GULESSERIAN: Um-hum.

10 DR. LEITNER: -- that gives the names of
11 three different desert scrub communities, and
12 refers to Holland, 1986, as the source. So if you
13 want to know what those are then you need to look
14 in Holland.

15 MS. GULESSERIAN: Okay. And what did
16 you -- can you refresh our memory on what you said
17 that Holland said about the desert shrub
18 vegetation.

19 DR. LEITNER: Well, the footnote in the
20 guidelines mentions Mojave saltbush scrub
21 vegetation. And if you look in Holland the
22 description, it gives the soils, et cetera, et
23 cetera, and then lists a number of species of
24 plants that typically occur in that vegetation, in
25 that community type. Okay?

1 MS. GULESSERIAN: Um-hum. Okay, and is
2 it your conclusion that based on that further
3 definition of desert shrub vegetation that there
4 is no desert shrub vegetation on the site?

5 DR. LEITNER: There is no native --
6 there is one species of saltbush that occurs on
7 the site. The other species that you would expect
8 to find in a natural desert saltbush scrub
9 community are not present on the power plant site.

10 MS. GULESSERIAN: Did the Mojave ground
11 squirrel guidelines distinguish between natural
12 and unnatural?

13 DR. LEITNER: Well, the description --

14 MS. GULESSERIAN: I'm asking this
15 witness --

16 DR. LEITNER: Yeah, yeah, they --

17 MS. GULESSERIAN: -- Mr. Leitner,
18 please.

19 DR. LEITNER: The description, the
20 footnote indicates that if you want to know
21 whether you're dealing with one of these native
22 plant communities, designated plant communities,
23 you should look at the description in Holland and
24 see if it fits.

25 And as I say, when we were drafting this

1 revision it never occurred to any of us on the
2 Technical Advisory Group that regrowth, a stand of
3 one species that's known to -- one species of
4 native shrub that's known to grow on the sites
5 that are disturbed, that that could be considered
6 a natural community. It just doesn't make sense.

7 A community consists of a number of
8 species of plants and animals that occur together.
9 This doesn't answer that. The areas with saltbush
10 on the site don't fit that definition.

11 MS. GULESSERIAN: Okay, so we're talking
12 about community now, but isn't it true that the
13 Mojave ground squirrel guidelines say potential
14 habitat is the desert shrub vegetation.

15 MS. LUCKHARDT: I think this has been
16 asked and answered. I think he's clearly
17 explained --

18 HEARING OFFICER CELLI: Sustained.

19 MS. GULESSERIAN: Are you aware that the
20 Holland publication describes the desert saltbush
21 scrub community as having low total groundcover
22 with much bare ground between the widely spaced
23 trucks?

24 DR. LEITNER: Yes.

25 MS. GULESSERIAN: Are you -- okay,

1 thank you. Are you aware that staff found the
2 project site contains 429.5 acres of Mojave Desert
3 wash scrub and atroplex scrub?

4 MS. LUCKHARDT: Are you asking about the
5 final staff assessment or his assessment?

6 MS. GULESSERIAN: I'm asking him whether
7 he's aware that the final staff assessment finds
8 that the project site contains 429.5 acres of
9 Mojave Desert wash scrub and agricultural
10 disturbed atroplex scrub.

11 MS. LUCKHARDT: Can you cite to the
12 final staff assessment so we can have him look at
13 where that appears?

14 MS. GULESSERIAN: I don't have a
15 computer.

16 HEARING OFFICER CELLI: Well, the
17 question is is he aware of that.

18 MS. LUCKHARDT: Okay.

19 HEARING OFFICER CELLI: And so I think
20 that's fair enough. The witness can testify as to
21 whether he's aware of the FSA's statement, if
22 there is, of how many acres of, what is it,
23 atroplex and the other kind? What was the other
24 part of that question?

25 MS. GULESSERIAN: It's 429.5 acres of

1 Mojave Desert wash scrub and agricultural disperse
2 atroplex scrub on the site.

3 HEARING OFFICER CELLI: And we
4 determined that the atroplex is really saltbush --

5 MS. SPEAKER: Synonymous.

6 HEARING OFFICER CELLI: It's the same
7 thing, okay.

8 (Pause.)

9 HEARING OFFICER CELLI: So the question
10 remains whether Dr. Leitner is aware that the FSA
11 contains --

12 DR. LEITNER: Yes, I am aware --

13 HEARING OFFICER CELLI: Okay.

14 DR. LEITNER: -- of that.

15 MS. GULESSERIAN: Did you do a
16 quantitative assessment of this vegetation?

17 DR. LEITNER: No, I did not do a
18 quantitative assessment, if by that you mean
19 counting the number of saltbush individuals that
20 were present on the site.

21 MS. GULESSERIAN: Did you map general
22 areas or do anything other, any other type of
23 quantitative assessment of the vegetation?

24 DR. LEITNER: Maps of the vegetation
25 types were prepared, and I had input into the

1 boundaries to try to get that correct.

2 MS. GULESSERIAN: And where are your
3 maps that we can refer to?

4 DR. LEITNER: The maps that were
5 produced I'm not sure what -- what exhibit that
6 would be.

7 HEARING OFFICER CELLI: Would those be
8 the maps in the FSA we're talking about, or in the
9 AFC?

10 MR. SOLORIO: They're cited in the FSA
11 as part of the AFC.

12 HEARING OFFICER CELLI: Okay. So, Ms.
13 Gulesserian, do you know what we're talking about
14 here? The maps that contain, you know, little --

15 (Parties speaking simultaneously.)

16 MS. GULESSERIAN: Okay, we can just move
17 on. When you say --

18 (Parties speaking simultaneously.)

19 MS. GULESSERIAN: When you say shrub
20 communities do not have appropriate variety of
21 native shrubs in cores needed to support Mojave
22 ground squirrel, did you do a quantitative
23 assessment so that your assessment can be reviewed
24 or verified?

25 DR. LEITNER: Anyone can go to the site.

1 I was there a few days ago. And you can walk
2 through the site and you will see all scale
3 saltbush shrubs; you will also see that almost the
4 entire herbaceous component consisting of plants
5 about half an inch tall, are these two invasive
6 species, the grass, Mediterranean grass and the
7 biliary or erodium.

8 So there is no problem. Anyone with
9 eyes can go to the site and see what plants are
10 there. So it's repeatable.

11 MS. GULESSERIAN: Is the site public or
12 private property?

13 DR. LEITNER: It's private.

14 MS. GULESSERIAN: Okay. So when you are
15 -- so is the answer it's based on visual surveys
16 and your testimony today, rather than a
17 quantitative assessment of the native shrubs?

18 DR. LEITNER: That's correct. There's
19 only one species of shrub there. And there are a
20 couple of species of invasive herbaceous weeds.
21 Not to be derogatory.

22 MS. GULESSERIAN: In your testimony --
23 sorry, excuse me. In doing your analysis isn't it
24 true that your one-day site visit occurred in
25 August, and another one-day site visit in October?

1 DR. LEITNER: That's correct.

2 MS. GULESSERIAN: And excuse me one
3 moment. Is it correct that these dates are
4 outside of the timeframe for visually surveying
5 for Mojave ground squirrel?

6 DR. LEITNER: My objective in visiting
7 the site was not to look for Mojave ground
8 squirrels. For one thing, visual surveys are,
9 even in the season when the animals are active,
10 are almost never effective. You don't see them
11 because they see you before you see them and get
12 away.

13 My purpose in going to the site on those
14 two occasions was to assess the habitat.

15 MS. GULESSERIAN: Are you familiar with
16 California Department of Fish and Game guidelines
17 which state that if a survey is conducted
18 according to these guidelines resulting in no
19 capture or observation of Mojave ground squirrel
20 that is not necessarily evidence that Mojave
21 ground squirrels do not exist, or that the site is
22 not actual or potential habitat?

23 DR. LEITNER: I'm aware of that, but
24 it's only a partial quote. You left out the rest
25 of it which states that however, the Department

1 will stipulate, for our purposes, that there ain't
2 any squirrels there.

3 Well, not exactly that language, but.

4 MS. LUCKHARDT: If you'd like the exact
5 if you could point me to where your original quote
6 is, we can read it into the record.

7 HEARING OFFICER CELLI: Or you'll brief
8 it later.

9 MS. GULESSERIAN: In your rebuttal you
10 state that there is no document in relationship
11 between percent shrub cover and presence, absence
12 of Mojave ground squirrel, is that correct?

13 DR. LEITNER: That is correct.

14 MS. GULESSERIAN: You state that the
15 relevant habitat variable is evidently not shrub
16 cover, but the right combination of suitable
17 native plant species.

18 DR. LEITNER: Yes, that's correct, I've
19 said that.

20 MS. GULESSERIAN: Are you familiar with
21 Scott Cashen's testimony that plant species common
22 in squirrels' diets were detected on the project
23 site, and that four of them comprised major food
24 sources for Mojave ground squirrel?

25 MS. LUCKHARDT: And can you point to

1 where that is in Mr. Cashen's testimony so we can
2 have that available for him to review?

3 (Pause.)

4 HEARING OFFICER CELLI: While he's
5 looking that up, Ms. Gulesserian, -- for you to
6 shorten your list.

7 MS. LUCKHARDT: Okay, we've got it.

8 MS. GULESSERIAN: You found it? Okay.

9 DR. LEITNER: Okay, yes, I'm looking at
10 it.

11 MS. GULESSERIAN: You're familiar with
12 that?

13 DR. LEITNER: Yes. I am, however, could
14 I --

15 MS. GULESSERIAN: Right, you said in
16 your rebuttal that you responded that the presence
17 of certain plant species is irrelevant to any
18 evaluation of habitat suitability, is that
19 correct?

20 MS. LUCKHARDT: Where is that exactly in
21 his testimony?

22 MS. GULESSERIAN: In his rebuttal
23 testimony?

24 MS. LUCKHARDT: Yeah, if you're going to
25 quote from it, I want to have it in front of him.

1 HEARING OFFICER CELLI: You know, as a
2 general rule when you're going to cross-examine
3 someone and use the transcripts or whatever, you
4 have that at your ready and -- does make a
5 smoother hearing.

6 (Pause.)

7 MS. GULESSERIAN: It's page 5 of your
8 rebuttal testimony, answer 13.

9 HEARING OFFICER CELLI: And what exhibit
10 is that?

11 MS. GULESSERIAN: Exhibit 27 -- 327.

12 HEARING OFFICER CELLI: 327, page?

13 MS. GULESSERIAN: Page 5, answer 13.

14 HEARING OFFICER CELLI: Thank you.

15 DR. LEITNER: Counsel, with your
16 permission could I attempt to clarify something
17 however.

18 You quoted the statement that goes for
19 plant species that were found by Recht to form
20 food resource, were found on the project site, is
21 that correct? I'm just asking for clarification.

22 MS. GULESSERIAN: Yes. I said are you
23 familiar with Scott Cashen's testimony that plant
24 species common in squirrels' diets were detected
25 on the project site, and that four of them

1 comprised major food sources.

2 DR. LEITNER: Yes, okay. So, I'm aware
3 of that, but if I could point out the project site
4 includes the transmission corridors, which are
5 natural habitat and have a great variety of plant
6 species.

7 So what we're really talking about is
8 habitat conditions on the plant site where the
9 number of plant species present is very small.
10 And, for example, one of the shrub species
11 mentioned by Recht, (indiscernible), I did not see
12 that. I've been all over the plant site, I did
13 not see that species there.

14 When I was at the plant site a few days
15 ago I did not see coreopsis there. So there may
16 be some confusion. Those species may occur to the
17 west of 14, which is clearly potential Mojave
18 ground squirrel habitat.

19 HEARING OFFICER CELLI: Do you have more
20 cross?

21 MS. GULESSERIAN: Yes. I need my expert
22 here --

23 So in your response to Mr. Cashen's
24 testimony that's been adopted by Dr. Bias, you
25 state that the presence of plant species is

1 relevant to any evaluation of habitat suitability,
2 is that correct? In answer number 13.

3 DR. LEITNER: Thirteen, okay.

4 MS. GULESSERIAN: There is no evidence
5 that such vegetation could support the Mojave
6 ground squirrel population. The conclusions of
7 Recht were based on visual observations of feeding
8 behavior and not on actual quantitative analysis
9 of the complete diet. In any event, the presence
10 of certain plant species within the project survey
11 area is irrelevant to any evaluation of habitat
12 suitability on the plant site. Is that what you
13 said?

14 DR. LEITNER: That is correct and --

15 MS. GULESSERIAN: Okay.

16 DR. LEITNER: -- can I give an
17 explanation or would that be okay? What I was
18 getting at was the fact that a particular plant,
19 an individual plant, might have been found, is not
20 the issue. The question is the availability of
21 adequate amounts of different plant species that
22 are required.

23 So that fact that you've got one
24 individual of coreopsis doesn't make it habitat.

25 MS. GULESSERIAN: Is it true that, okay,

1 we're going to move on to bio, condition bio-11,
2 which is in the final staff assessment. Requires
3 compensation for five acres of lost desert shrub
4 vegetation at a three-to-one ratio or 15 acres of
5 compensation land for the transmission line.

6 MS. LUCKHARDT: Now where are you
7 looking at in bio-11 so I can get him to the right
8 spot? These are really long conditions.

9 MS. GULESSERIAN: Bio-11, --

10 HEARING OFFICER CELLI: I'm looking at
11 the new, the latest, which was exhibit 338, which
12 contains bio-11 desert tortoise and Mojave ground
13 squirrel compensatory mitigation. And it's
14 referring to 115 acres of land. Is that what
15 we're talking about? That's at page --

16 MS. LUCKHARDT: Yeah, I have the
17 condition. I'm just not sure which portion of it
18 she is referring to with her question.

19 MS. GULESSERIAN: Okay, let me rephrase.
20 Is it your understanding that the final staff
21 assessment is requiring compensation for five
22 acres of lost desert shrub vegetation on the
23 transmission line?

24 DR. LEITNER: Yes, that's my
25 understanding.

1 MS. GULESSERIAN: Okay, and it's
2 requiring compensation at a three-to-one ratio for
3 five acres of lost desert shrub vegetation?

4 DR. LEITNER: On the transmission line
5 corridors, yes, that's my understanding.

6 MS. GULESSERIAN: In your testimony you
7 stated, according to the best dietary information
8 available Mojave ground squirrels require forage
9 from a variety of native shrubs and herbaceous
10 species to sustain them through the active season.

11 MS. LUCKHARDT: Again, where are you
12 reading from? Rebuttal?

13 MS. GULESSERIAN: In his testimony.
14 Sorry about the page -- I apologize --

15 HEARING OFFICER CELLI: Is that exhibit
16 327?

17 MS. LUCKHARDT: I've got 327.

18 MS. GULESSERIAN: Do you agree that
19 according to the best dietary information
20 available Mojave ground squirrels require forage
21 from a variety of native shrub and herbaceous
22 species to sustain them through their active
23 season?

24 DR. LEITNER: Yes, I would agree with
25 that.

1 MS. GULESSERIAN: What would you mean by
2 the word sustain?

3 DR. LEITNER: Provide sufficient
4 calories, nutrients, moisture so that they could
5 survive, produce young and put on enough fat to
6 get through the dormant period.

7 MS. GULESSERIAN: And when you say a
8 variety of native shrub, what do you mean by
9 variety?

10 MS. LUCKHARDT: I think that's been
11 asked and answered.

12 HEARING OFFICER CELLI: I agree. I
13 think that I'll sustain that objection.

14 MS. GULESSERIAN: Has there ever been a
15 study that scientifically tested whether a variety
16 of shrubs and herbaceous species are required to
17 sustain Mojave ground squirrel?

18 DR. LEITNER: I'm not sure that I
19 understand your question. What type of study are
20 you -- what sort of study are you envisioning?

21 MS. GULESSERIAN: Okay, maybe we need to
22 find your statement in your testimony, because
23 according to your testimony you stated, according
24 to the best dietary information available, Mojave
25 ground squirrels require forage from a variety.

1 I'm wondering if you are referring to
2 some sort of scientifically tested study, or what
3 the basis is for that statement.

4 DR. LEITNER: The basis for that
5 statement is, well, there's several things. But
6 the main basis for that statement would be the
7 study that was conducted at four sites in the Coso
8 range over a period from 1998 to '96 (sic) where
9 samples were taken and analyzed to determine what
10 males and females, adults and juveniles were
11 feeding on in wet years, dry years, spring,
12 summer.

13 So a picture of -- this is the best in
14 the sense that it covers multiple years, covers
15 different seasons, different groups of animals,
16 different study sites.

17 So, yeah, that's --

18 MS. GULESSERIAN: Can you tell me where
19 the -- sorry, were you finished?

20 DR. LEITNER: Yes, I --

21 MS. GULESSERIAN: -- where the Coso
22 Range is in relation to the geographic range of
23 the Mojave ground squirrel?

24 DR. LEITNER: It's toward the northern
25 edge of the range. It's in Inyo County about 30

1 miles north of Ridgecrest.

2 MS. GULESSERIAN: Did you conduct or
3 participate in the five-year status review for the
4 Mojave ground squirrel in 2008?

5 DR. LEITNER: Five-year status review in
6 2008.

7 MS. GULESSERIAN: Have you done any
8 status reviews for the Mojave ground squirrels?

9 DR. LEITNER: Are you -- this is --
10 you're referring to a document that was produced
11 by, -- status review -- I'm not sure what document
12 you're talking about. Or if it is a document or
13 if --

14 MR. BABULA: We're only at squirrels.
15 Is there a way we could move this a little bit --

16 HEARING OFFICER CELLI: Yeah, it's now
17 5:00. And I wonder, Ms. Gulesserian, how much
18 more cross do you have on the squirrels?

19 MS. GULESSERIAN: The squirrels are
20 important. I just have one --

21 HEARING OFFICER CELLI: I don't question
22 that.

23 MS. GULESSERIAN: -- question based on
24 this study. And I do apologize for not citing
25 throughout my questions. I thought we'd be more

1 readily familiar, but --

2 HEARING OFFICER CELLI: You know, just,
3 -- a status review that you're looking -- you're
4 looking for a status review --

5 MS. GULESSERIAN: Thank you.

6 HEARING OFFICER CELLI: -- if you can
7 just give him --

8 MS. GULESSERIAN: Leitner, P., 2008,
9 current status of the Mojave ground squirrel.

10 DR. LEITNER: Oh, that status review. I
11 thought perhaps Fish and Game had produced a
12 status review. Okay, I'm familiar with that.

13 MS. GULESSERIAN: Familiar with that --

14 DR. LEITNER: Yes.

15 MS. GULESSERIAN: -- status review?

16 DR. LEITNER: Right, yes.

17 MS. GULESSERIAN: Okay. In that status
18 review did you state, it is clear that additional
19 field surveys are urgently needed to provide a
20 more comprehensive picture of Mojave ground
21 squirrel occurrence and status throughout its
22 range.

23 It is also clear that surveys to date
24 have been seriously inadequate in documenting
25 patterns of Mojave ground squirrel distribution

1 because trapping sites have, for the most part,
2 not been selected according to a randomized
3 scheme.

4 In the absence of a randomized sampling
5 procedure the results of such surveys apply on as
6 a trapping site, and cannot be extrapolated to the
7 general region.

8 Is that what you wrote in your status
9 review?

10 MS. LUCKHARDT: Would you like to see
11 the document and the location of where that is
12 before you respond? Or do you --

13 DR. LEITNER: No.

14 MS. LUCKHARDT: Okay.

15 DR. LEITNER: It sounds very familiar.
16 In other words, my answer is yes, I am familiar
17 with that.

18 MS. GULESSERIAN: So by using that data
19 to support your conclusion that the Beacon site
20 does not provide food sources, not just necessary
21 to sustain Mojave ground squirrel, aren't you
22 doing the thing that you cautioned against in the
23 status review?

24 DR. LEITNER: Well, no. In the status
25 review I was not talking about diet. I was rather

1 talking about getting a complete picture of the
2 distribution and abundance of the squirrel
3 throughout its range.

4 What I said about the dietary data that
5 we have from the Coso study is that it's the best
6 available.

7 And it's interesting, I have had
8 analysis done on more fecal samples from a site
9 just north of Red Rock Canyon. And I got the
10 preliminary results back, and again, sure enough,
11 in the spring they're eating mostly foliage of
12 (indiscernible) shrub, spiny hop-sage. And as you
13 go into April they're eating mostly native
14 wildflowers.

15 So that's a site, you know, another
16 site. And so, I'm sorry to spring that, but I
17 just got the results.

18 MS. GULESSERIAN: Do you agree that
19 certain plant species do not show up in fecal
20 matter from the Mojave ground squirrel, based on
21 published literature?

22 DR. LEITNER: As your witness has
23 stated, there are difficulties with the fecal
24 analysis in that there are some food items that
25 are readily digestible and may not be able to pick

1 up under the microscope any fragments.

2 However, considering that we can't take
3 stomach samples from this listed animal, the fecal
4 analysis is probably the best we can do.

5 And I can give an example, although we
6 observed --

7 HEARING OFFICER CELLI: I actually --

8 MS. GULESSERIAN: That's okay, thank
9 you.

10 HEARING OFFICER CELLI: -- believe that
11 the question was answered.

12 MS. GULESSERIAN: Yes, thank you.

13 DR. LEITNER: Oh, I -- sorry.

14 HEARING OFFICER CELLI: I appreciate
15 your -- Is there any further cross from CURE?

16 MS. GULESSERIAN: There is not, thank
17 you very much.

18 HEARING OFFICER CELLI: Any cross by the
19 staff?

20 MR. BABULA: Just a quick question.

21 CROSS-EXAMINATION

22 BY MR. BABULA:

23 Q I think I need a clarification. My
24 understanding was that you're mitigating for
25 ground squirrel on the project site and on the

1 transmission. So you are presuming presence in
2 both places. I mean isn't that -- you may not
3 think there are any there, but you're mitigating
4 or you're acquiring habitat.

5 So in the end there is mitigation
6 regardless of if there's two or zero or there's no
7 habitat. Is that the case?

8 DR. LEITNER: Well, that is true. I
9 think that the mitigation for loss of habitat on
10 the transmission area, that's loss of habitat.
11 Whereas, we're looking at compensation for some
12 minimal take on the plant site.

13 MR. BABULA: Right.

14 DR. LEITNER: Okay. But there is
15 substantial mitigation in my opinion.

16 MS. VANCE: Just to clarify, Fish and
17 Game was not willing to concede that the species
18 was not absent with no trapping surveys. And so
19 there was a series of meetings and discussions
20 where the applicant conceded and gave us some
21 reasonably supported information, based on
22 biological considerations, that there could be
23 animals present in low densities, at least during
24 part of their lifecycle.

25 And we concurred with that

1 determination. But we did not concur that it's
2 not habitat, that they're not there. And I just
3 want to be clear on that. And the FSA reflects
4 that agreement.

5 HEARING OFFICER CELLI: That's fabulous.
6 And there's no question pending.

7 MR. BABULA: Was that your
8 understanding?

9 HEARING OFFICER CELLI: And so I'm just
10 going to ask the witnesses -- I know everybody's
11 so enthusiastic to testify, but --

12 (Laughter.)

13 HEARING OFFICER CELLI: -- I'm going to
14 request you wait for a question from your attorney
15 first.

16 (Laughter.)

17 HEARING OFFICER CELLI: -- not what you
18 want to speak to specifically. So where we're at
19 now is with staff, right.

20 MR. BABULA: Okay. So given that, so
21 that's your understanding, is there is some sort
22 of mitigation because there was a feeling that
23 there may be some transients or there's some
24 ground squirrels on the project site that could be
25 impacted.

1 So the mitigation that's being proposed
2 is to address loss of those two individuals?

3 DR. LEITNER: That's my understanding.

4 MR. BABULA: Okay. No further
5 questions.

6 HEARING OFFICER CELLI: Any redirect?

7 MS. LUCKHARDT: No.

8 (Laughter.)

9 HEARING OFFICER CELLI: Your next
10 witness.

11 MS. LUCKHARDT: Okay, my next witness is
12 Dr. Karl. And this will be shorter.

13 DIRECT EXAMINATION

14 BY MS. LUCKHARDT:

15 Q One question, or actually I have two
16 questions. How many -- or maybe three --

17 (Laughter.)

18 MS. LUCKHARDT: I need to lay some kind
19 of foundation. So your role on this project has
20 been to analyze impacts to the desert tortoise, is
21 that correct?

22 DR. KARL: That's correct.

23 MS. LUCKHARDT: And how many years have
24 you been studying the desert tortoise?

25 DR. KARL: Thirty-two.

1 MS. LUCKHARDT: And can you give us --

2 HEARING OFFICER CELLI: So we will
3 determine that she's an expert in the desert
4 tortoise; for 32 years she's done that.

5 MS. LUCKHARDT: That's right.

6 Can you provide your overall thoughts on
7 the development of the Beacon site for solar
8 generation and its impact on the desert tortoise?

9 DR. KARL: Yes, thank you. From the
10 perspective of desert biology and impacts to
11 native wildlife species it would be really hard to
12 find a site that's more suitable for development
13 of a solar project in the desert than the Beacon
14 site.

15 And this is because this site is highly
16 degraded. It has no natural communities on it.
17 Second, it's been highly degraded for decades. It
18 has been out of use or of little to no use by
19 terrestrial vertebrates because of farming and
20 because it was abandoned.

21 It is near or adjacent to other
22 anthropogenic development, including a highway
23 that goes north/south from southern California to
24 the Owens Valley.

25 And fourth, the project will not result

1 in any further impacts to terrestrial wildlife
2 species.

3 Those are the overarching considerations
4 that make this a truly excellent site for solar
5 development in the Mojave Desert.

6 For desert tortoises in particular,
7 there were comprehensive U.S. Fish and Wildlife
8 Service protocol level surveys conducted on the
9 project in 2007 and 2008. The surveys were
10 approved by the Service at Fish and Game. No
11 tortoises were found to occupy the site.

12 During those same surveys tortoises were
13 found to occupy the immediately adjacent area.
14 I'm talking about the plant site. They were found
15 to occupy the immediately adjacent area even up
16 to the border of the plant site. They stop short
17 of using the plant site. Why? Because there is
18 no tortoise habitat on the plant site.

19 Despite the fact that there is no
20 tortoise habitat on the plant site, Beacon LLC has
21 agreed to purchase 100 acres of usable desert
22 tortoise habitat that will be protected and
23 managed in perpetuity in an area that's targeted
24 for desert tortoise conservation and recovery.
25 And this area will either expand or consolidate

1 these conservation areas.

2 And this will assist in desert tortoise
3 persistence and recovery during the same time --
4 at the same time the Beacon project will not
5 diminish desert tortoise persistence or recovery.

6 So there is a net benefit to desert
7 tortoises from the Beacon project. And just about
8 does it. That's about as good as it gets for a
9 solar site in the Mojave Desert.

10 MS. LUCKHARDT: And just to clarify one
11 point, were protocol desert tortoise surveys
12 conducted along the gas pipeline route when the
13 gas pipeline was proposed for the project?

14 DR. KARL: It's my understanding they
15 were, in 2008.

16 MS. LUCKHARDT: Thank you. Dr. Karl's
17 available for cross if you want to do desert
18 tortoise at this point.

19 HEARING OFFICER CELLI: Ms. Gulesserian,
20 do you have a very focused --

21 CROSS-EXAMINATION

22 BY MS. GULESSERIAN:

23 Q Did you survey around the perimeter of
24 the project site?

25 DR. KARL: I did not survey the project

1 site at all, other than doing a habitat
2 evaluation. The surveys were conducted by --

3 MS. LUCKHARDT: What we may need to do
4 at this point in time is take Ms. Guigliano's
5 testimony, as well, so that the questions, if they
6 go to the surveys, can be taken by her at the same
7 time, so we can do the --

8 HEARING OFFICER CELLI: Well, if we're
9 going to do that then rather than go into cross,
10 let's just take her direct right now, if it's a
11 quick one.

12 MS. LUCKHARDT: Yeah.

13 HEARING OFFICER CELLI: And then, Ms.
14 Gulesserian, we'll let you cross both witnesses.
15 So go ahead -- is it Guigliano or Guigliano?

16 MS. GUIGLIANO: Guigliano.

17 HEARING OFFICER CELLI: Okay, you spell
18 it G-i-u?

19 MS. GUIGLIANO: G-u-i.

20 (Laughter.)

21 DIRECT EXAMINATION

22 BY MS. LUCKHARDT:

23 Q And, Ms. Guigliano, I understand that
24 you have one correction to your testimony. Could
25 you point that out and refer to the exhibit

1 number.

2 MS. GUIGLIANO: Yes. Yeah, it's exhibit
3 325. In exhibit 325, on page 9, paragraph number
4 4 should actually say one western burrowing owl
5 was observed outside of the project, as opposed to
6 no western burrowing owls were observed. So this
7 was during the groundwater pump testing.

8 MS. LUCKHARDT: Did everyone get that?

9 HEARING OFFICER CELLI: Yes.

10 MS. LUCKHARDT: Okay. And then could
11 you please, in a short summary, provide your
12 response to the concerns expressed by Mr. Cashen
13 in his testimony regarding impacts to the western
14 burrowing owl?

15 MS. GUIGLIANO: Sure. Mr. Cashen claims
16 or state that appropriate western burrowing owl
17 surveys, protocol surveys guidelines were not
18 conducted for the project.

19 And, in fact, there are four phases to
20 western burrowing owl surveys. I don't think I
21 need to get into the details of the four phases.
22 All four phases were conducted for all areas of
23 the project site.

24 They were conducted in 2007 for the
25 plant site, and a transmission area. They were

1 conducted in 2008 for what we call the
2 supplemental survey area, and included an 80-acre
3 parcel in the north, a 14-acre parcel north of the
4 access road, and the transmission corridor space
5 on the centerline that was more accurately
6 mapped. And, in addition, protocol surveys
7 were conducted along the natural gas pipeline.

8 In 2009 surveys were conducted for the
9 emergency access road which was added from the
10 northeast corner of the project site to the road.
11 And in 2009 no western burrowing owls were found.
12 And so that's the only survey that required winter
13 surveys, which were conducted in January of 2010.

14 All the results from all of the surveys
15 for western burrowing owls were provided in survey
16 reports in accordance with phase four of the
17 guidelines.

18 In 2007 there were only two western
19 burrowing owls detected within the plant site. In
20 2008 there was one burrowing owl detected in the
21 buffer of the plant site, two detected in the
22 buffer to the gasline. And in 2009 and 2010 for
23 the access road no western burrowing owls were
24 detected.

25 Mitigation was proposed in accordance

1 with (inaudible) and CDFG guidelines for two
2 individuals, because in any year no more than two
3 individuals were found within the project site
4 limits.

5 You cannot assume that the individuals
6 that were detected in different years during
7 different survey protocols were independent
8 sightings and individual owls.

9 MS. LUCKHARDT: And then I believe
10 you've covered this a little bit, but do you agree
11 with Dr. Bias' testimony that proper surveys were
12 not conducted of the natural gas pipeline route?

13 MS. GUIGLIANO: No, that's not correct.
14 He didn't reference the 2008 spring report. And
15 in 2008 a full survey, protocol surveys were
16 conducted for rare plant, burrowing owl, desert
17 tortoise within the natural gas pipeline when that
18 pipeline was added. It was added after the spring
19 surveys for '07, so they were conducted
20 independently and reported in the 2008 spring
21 survey report.

22 MS. LUCKHARDT: And why does that
23 pipeline corridor matter for the way the project
24 is currently configured?

25 MS. GUIGLIANO: The natural gas pipeline

1 was originally surveyed for the purpose of
2 installation of natural gas pipeline, but the same
3 pipeline route is being used for the water
4 pipeline. So basically it's a utility pipeline
5 corridor now, and the survey still applies to the
6 same area.

7 From the point where the surveys were,
8 for the natural gas pipeline, the pipeline to
9 California City proceeds in California City
10 Boulevard. So no additional surveys were
11 conducted.

12 MS. LUCKHARDT: And that would be the
13 section of the waterline from the plant site to?

14 MS. GUIGLIANO: To California City.

15 MS. LUCKHARDT: Thank you. Both
16 witnesses are available for cross.

17 HEARING OFFICER CELLI: Thank you. Now,
18 if you're going to cross a witness or the other,
19 please call them by name so we know who needs to
20 answer the question. CURE.

21 CROSS-EXAMINATION

22 BY MS. GULESSERIAN:

23 Q I was asking about desert tortoise
24 earlier, so I was asking Ms. Karl if you surveyed
25 the perimeter of the project site. Is that

1 question to Ms. -- sorry?

2 MS. GUIGLIANO: Guigliano.

3 MS. GULESSERIAN: -- Guigliano.

4 MS. GUIGLIANO: Full protocol surveys
5 were conducted in the plant site and transmission
6 lines and in the associated buffers between
7 adjacent areas, as required by the agencies in the
8 protocol survey guideline.

9 MS. GULESSERIAN: Did you find an impact
10 -- so this is back to Ms. Karl. Did you find an
11 impact to juvenile carcass on the project site?

12 DR. KARL: Actually that would be Dr.
13 Karl.

14 MS. GULESSERIAN: Excuse me, thank you.

15 DR. KARL: And (inaudible) did find two
16 juvenile carcasses onsite, both of which had raven
17 -- very likely, based on the type of hole, a raven
18 hole from the beak in the carapace. So these
19 juveniles were depredated by ravens.

20 MS. GULESSERIAN: Did you find a
21 deteriorated adult burrow on the project site?

22 DR. KARL: There was a deteriorated
23 adult burrow on the project site.

24 MS. GULESSERIAN: Did you find two sets
25 of bone and carapace fragments on the project

1 site?

2 DR. KARL: Along the southern border
3 just inside the plant site there were two groups
4 of immature tortoise bone fragments which were
5 greater than four years old, and very likely based
6 on their proximity, may have been the same.

7 MS. GULESSERIAN: When you say they're
8 greater than four years old, did you do testing to
9 determine that they were greater than four years
10 old?

11 DR. KARL: No. But there is a standard
12 that is used by desert tortoise biologists. And
13 it's fairly easy to tell qualitatively from a
14 number of factors if a tortoise has died within
15 the last year, or if it has died more than four
16 years previously.

17 MS. GULESSERIAN: What are those
18 qualitative factors? Are they described anywhere?

19 DR. KARL: Under a year or over four
20 years?

21 MS. GULESSERIAN: Well, you say that
22 they are greater than four years old, so --

23 DR. KARL: Um-hum.

24 MS. GULESSERIAN: -- what did you find
25 that made them greater than four years old?

1 DR. KARL: Tortoise bones that are
2 greater than four years old tend to be a --
3 disarticulate very easily. The edges tend to be
4 crumbly, even to the point of being powdery.

5 The bone has a scaly appearance to it
6 and it's flaky. And scoots, if they're present at
7 all, on an older carcass like this, would be, in
8 most cases, -- it really depends on where the
9 carcass might be, but this one was groups of
10 fragments. So in most cases the scoot would not
11 be adhered to the bone any longer, and there would
12 be the annulari on the scoot would be peeling to a
13 great extent.

14 MS. GULESSERIAN: Are you aware of the
15 FSA's conclusion that desert tortoise might occur
16 within 429.5 acres of the project site that
17 supports disturbed saltbush scrub and desert wash
18 scrub?

19 DR. KARL: Yes.

20 MS. GULESSERIAN: Is this potential
21 habitat for this species?

22 DR. KARL: No.

23 MS. GULESSERIAN: What is the basis for
24 your conclusion that the plant site does not
25 provide habitat for desert tortoise?

1 DR. KARL: Most of the plant site is
2 barren. The only place where there are shrubs is
3 in the wash, which is highly degraded. There's a
4 little bit of lepidospartum. The patches of
5 shrubs in the wash are separated by distances of
6 1875 feet, 760 feet, and it goes down. But there
7 are broad stretches where there is no vegetation
8 in this wash.

9 The lepidospartum is pretty much the
10 only species there. And so it provides some
11 cover, but very very patchy.

12 At the north end of this wash it's a
13 soil, and it's completely inundated by Russian
14 thistle, which is a noxious exotic species.

15 On the 369 acres of saltbush scrub in
16 the northwest site, as Dr. Leitner so eloquently
17 stated, it is a monotypic stand of saltbush. Now
18 that is not a natural habitat. A natural all-
19 scale scrub habitat would include a number of
20 other species.

21 The other thing that's very important
22 and it seems to be overlooked a great deal is that
23 habitat is not simply the vegetation. It's not
24 simply the shrub species that are present.

25 Shrub species composition is merely one

1 aspect of habitat. Species evenness, species
2 richness, the height of the shrubs, the
3 topography, the microtopography, the hydrology,
4 the soils, the substrate, those are all very very
5 important features.

6 And in that area, in the northwest,
7 where there's regrowth of saltbush scrub, the
8 soils, in fact, are very fine, they're very
9 compacted. They show a lot of evidence of
10 standing water, which isn't really a great thing
11 for a burrowing animal.

12 And, in fact, if you look at the soils
13 analysis for the AFC, it identifies this as
14 Rosamond clay loam, saline, alkaline. That is not
15 supportive of desert tortoises.

16 MS. GULESSERIAN: Did you just say that
17 there's standing water on the project site?

18 DR. KARL: I said that it's cracked, so
19 it was indicative of standing water. It's very
20 silty soil which holds water.

21 MS. GULESSERIAN: In your rebuttal
22 testimony you state that there's little scientific
23 information statistically correlating habitat
24 qualities to desert tortoise population densities
25 and recovery potential.

1 DR. KARL: That's true.

2 MS. GULESSERIAN: This is exhibit 326.

3 And you also stated that there's published papers
4 are almost nonexistent and the handful of
5 unpublished papers either provide detailed
6 analysis correlating habitat variable in localized
7 area, or failed to conduct an in-depth analysis.

8 So, if there's little scientific
9 information and published papers are almost
10 nonexistent, how can you now say that the habitat
11 variables on the site mean that desert tortoise
12 are not there?

13 DR. KARL: That's a very good question.
14 I did my masters thesis on the habitat
15 associations of the desert tortoise in Nevada.
16 After that I spent the next 30 years assessing
17 habitat and tortoise densities in California,
18 Nevada and Utah.

19 So, --

20 MS. GULESSERIAN: So did you --

21 DR. KARL: -- I have quite a good idea
22 about where tortoises reside and where they don't.

23 And I had the opportunity, and Judy
24 would know this, too, we had the opportunity to
25 look at tortoise populations when tortoise

1 populations were high.

2 The current -- any current analyses of
3 habitat are based on the current tortoise
4 densities, which are very very low. Tortoise
5 densities have declined dramatically in the last
6 20 years. And in many places where there is still
7 excellent habitat there are very few tortoises.

8 So it's -- the newer studies would
9 probably fail because of a very fine-grained
10 approach based on current tortoise densities.

11 MS. GULESSERIAN: So in these years of
12 research on desert tortoise population you're
13 still saying there's little scientific information
14 and barely any published papers correlating
15 habitat qualities to desert populations.

16 Did you publish anything that would help
17 us with the little scientific information that is
18 out there?

19 DR. KARL: No.

20 MS. GULESSERIAN: Okay. Is it correct
21 that published papers are generally subject to the
22 rigorous scrutiny of peers in the scientific
23 community?

24 DR. KARL: Published papers generally
25 are.

1 MS. GULESSERIAN: Okay. Is it possible
2 for desert tortoise to occur on barren areas
3 located in between habitat areas?

4 DR. KARL: It's possible for a tortoise
5 to walk across anything.

6 MS. GULESSERIAN: Okay.

7 DR. KARL: Including a road, including
8 asphalt. I've seen them on highways quite a
9 number of times.

10 MS. GULESSERIAN: So it's possible that
11 they would occur between different shrub
12 vegetations?

13 DR. KARL: Between -- you mean different
14 shrubs?

15 MS. GULESSERIAN: On barren lands
16 between different shrubs or shrub communities.

17 DR. KARL: There probably wouldn't be
18 different shrub communities in the same area, but
19 it wouldn't matter. Your question is would they
20 walk on barren land. Yes, they would.

21 MS. GULESSERIAN: Okay. Is it true that
22 desert tortoise sign, burrows, scats, carcasses
23 indicates presence and requires formal
24 consultation with Fish and Wildlife Service?

25 DR. KARL: Burrows, scat and -- there

1 were no scat --

2 MS. GULESSERIAN: Desert tortoise sign.
3 Does desert tortoise sign indicate presence and
4 require formal consultation with Fish and Wildlife
5 Service?

6 (Parties speaking simultaneously.)

7 DR. KARL: -- tortoise sign does not
8 necessarily indicate present on the site. And you
9 have to qualify the kind of sign. The kinds of
10 sign that were found on the Beacon site were two
11 juveniles, which were clearly depredated by
12 ravens. They could easily have been dropped
13 there.

14 And the bone fragments on the southern
15 edge were on the southern edge, but, again, any
16 carcass, even an entire intact carcass could be
17 transported to the site. So just because you see a
18 carcass doesn't mean the animal died there.

19 So the burrow -- now the burrow is
20 actually an excellent indicator that there
21 probably are no tortoises on the site, because it
22 was a deteriorated burrow. And tortoises have a
23 tendency to use anywhere from, oh, two to 20
24 burrows every year.

25 And so if a tortoise were actually

1 living there, using that site on a regular basis,
2 it was part of its core use area, or even part of
3 its home range, you would expect to see more
4 burrows, scat and potentially even the tortoise.

5 So, there was only one deteriorated
6 burrow and no scat, no other burrows. Scat and
7 burrows, especially current burrows, are
8 suggestive that tortoises could be on a site.

9 MS. GULESSERIAN: So are you saying that
10 there's no desert tortoise sign on the project
11 site?

12 DR. KARL: On the plant site. I did not
13 say there's no sign. I'm saying that there are no
14 tortoises on the plant site.

15 MS. GULESSERIAN: Is there desert
16 tortoise sign on the project site?

17 DR. KARL: Yes, on the project site.

18 MS. GULESSERIAN: Okay. Is it true the
19 project area on the west side of state route 14 is
20 habitat, is occupied by desert tortoise, and
21 therefore consultation with Fish and Wildlife
22 Service is required?

23 MS. LUCKHARDT: I object. That calls
24 for a legal conclusion, asking whether
25 consultation with Fish and Wildlife Service is

1 required.

2 MS. GULESSERIAN: Are you consulting
3 with Fish and Wildlife Service regarding the
4 habitat, desert tortoise habitat, and desert
5 tortoises?

6 MR. BABULA: I would object that
7 anything with the Fish and Wildlife Service is a
8 separate permit. We have no in-lieu authority to
9 do permits, to cover permits from the Service. So
10 it's irrelevant to this proceeding.

11 HEARING OFFICER CELLI: What's the
12 relevance? Offer of proof.

13 MS. GULESSERIAN: I'd like to know
14 whether the Fish and Wildlife Service is
15 evaluating the applicant's biological resource
16 data on desert tortoise.

17 MS. LUCKHARDT: I just want to point out
18 the obvious, that the Fish and Wildlife Service is
19 here and so --

20 HEARING OFFICER CELLI: That's right.

21 MS. LUCKHARDT: -- why are you asking
22 the witness about --

23 (Parties speaking simultaneously.)

24 MS. GULESSERIAN: So it should be easy
25 to answer whether the applicant is consulting --

1 HEARING OFFICER CELLI: Objection
2 sustained.

3 MS. GULESSERIAN: -- with the Fish and
4 Wildlife Service.

5 HEARING OFFICER CELLI: Let's move to
6 the next. It's now 5:30, by the way. If you're
7 finished with your cross, we're going to take a
8 break.

9 MS. GULESSERIAN: I am with Ms. Karl.

10 HEARING OFFICER CELLI: Okay.

11 MS. GULESSERIAN: Dr. Karl, excuse me.

12 HEARING OFFICER CELLI: And so, well,
13 you say that. Did you have further questions for
14 Ms. Guigliano?

15 MS. GULESSERIAN: I do.

16 HEARING OFFICER CELLI: All right.
17 We're going to take a five-minute break. Everyone
18 needs to be back in their seats at 20 to 6:00.

19 I just want to make mention of the fact
20 that this is biology. We haven't even heard from
21 staff yet.

22 MR. BABULA: We'll be short.

23 (Laughter.)

24 HEARING OFFICER CELLI: And -- but you
25 have three witnesses and it always takes longer

1 than you think.

2 But I need to, in this five minutes, if
3 you wouldn't mind, Ms. Gulesserian, really try to
4 have everything crisply ready to go for your
5 remaining five minutes or less of cross-
6 examination --

7 MS. GULESSERIAN: Yes.

8 HEARING OFFICER CELLI: -- please.

9 Thank you. Let's take our break now; take five
10 minutes and come on back.

11 (Brief recess.)

12 HEARING OFFICER CELLI: So are we back
13 on the record, is everybody here that needs to be
14 here? It looks like everyone is here so now we
15 can, with that, CURE you are crossing Ms.
16 Guigliano.

17 MS. GULESSERIAN: Ms. Guigliano, is it
18 correct that mitigation for impacts to burrowing
19 owl is based on loss of owls?

20 MS. GUIGLIANO: Yes.

21 MS. GULESSERIAN: And does this require
22 surveys as described in your rebuttal testimony,
23 which is exhibit 325, pages 8 through 10?

24 MS. GUIGLIANO: Yes.

25 MS. GULESSERIAN: Did you survey the 23

1 miles southern segment of the Rosamond Community
2 Services recycled water pipeline route?

3 MS. GUIGLIANO: All surveys, biological
4 surveys for the Rosamond pipeline were done by the
5 Energy Commission, not by us.

6 MS. GULESSERIAN: Did you survey the
7 alternative southern pipeline route for the
8 Rosamond Community Services recycled water
9 pipeline through the Air Force Base?

10 MS. LUCKHARDT: I think that's been
11 asked and answered.

12 MS. GULESSERIAN: I asked before about
13 the 23-mile southern segment, for clarification --

14 HEARING OFFICER CELLI: You may answer
15 the question if you know the answer.

16 MS. GUIGLIANO: We did not do any survey
17 associated with the Rosamond pipeline.

18 HEARING OFFICER CELLI: Thank you.

19 MS. GULESSERIAN: For the project site,
20 it is accurate that in 2007 two western burrowing
21 owls were observed?

22 MS. GUIGLIANO: Yes.

23 MS. GULESSERIAN: Is it also accurate
24 that in 2008 you surveyed other project areas and
25 found three individual owls?

1 MS. GUIGLIANO: In 2008 we surveyed
2 additional supplemental survey areas and found
3 three owls in the buffer area.

4 MS. GULESSERIAN: In your rebuttal
5 testimony to Mr. Cashen, he had testified that you
6 failed to account for an additional owl identified
7 at the site, and that mitigation should be for at
8 least three pairs. You are familiar -- your
9 response, that it's not appropriate to assume
10 there's different birds, correct?

11 MS. GUIGLIANO: You asked two different
12 things. Something about a third owl in 2008?

13 MS. GULESSERIAN: Okay, I can go back.
14 Are you familiar with Scott Cashen's testimony
15 that required mitigation for two owl pairs fails
16 to account for the fifth owl identified at the
17 site?

18 MS. GUIGLIANO: The third owl at the
19 site. Yes, I'm familiar with Mr. Cashen's
20 testimony. But I don't agree that there's three
21 independent sightings of owls.

22 MS. GULESSERIAN: Okay, what's your
23 basis for not agreeing?

24 MS. GUIGLIANO: Each year during the
25 protocol surveys we saw no more than two owls

1 within the project area. And so in '07 there were
2 two owls identified within the plant site. A
3 third owl that was referred to was identified
4 outside of the protocol survey in similar areas
5 during pump testing.

6 In 2008 three owls were observed. Only
7 one was in the plant site and one was in the
8 buffer area, not in the plant site.

9 So, in no single year were there ever
10 more than two independent sightings of owls during
11 a protocol survey session.

12 MS. GULESSERIAN: Okay, can you clarify
13 then for the record whether you went to the same
14 area of the plant site in each year?

15 MS. GUIGLIANO: In 2007 the bulk of the
16 plant site was surveyed, as were the transmission
17 lines. In 2008 there was an 80-acre parcel that
18 was within the original plant site area that was
19 surveyed, so it's a section of the northern
20 portion that's adjacent to the rest of the parcel.
21 In addition to the 14-acre, which is adjacent to
22 the site above the northern -- or above the access
23 road from the west.

24 MS. GULESSERIAN: And so were the birds
25 located in the same location each year?

1 MS. GUIGLIANO: Were the owls located in
2 the same locations? In 2008 -- in 2007 it was in
3 the northwest corner; in 2008 it believe it was
4 also a sighting in the buffer on the north side.
5 So it's likely that it could have been the same
6 owl.

7 The other sightings in '08 were along
8 the pipeline, not associated with the plant site,
9 and in the buffer.

10 MS. GULESSERIAN: Okay. I have no
11 further questions.

12 HEARING OFFICER CELLI: Thank you.
13 Cross, staff?

14 MR. BABULA: Quick question.

15 HEARING OFFICER CELLI: Please make sure
16 you identify who you're asking --

17 MR. BABULA: Okay.

18 CROSS-EXAMINATION

19 BY MR. BABULA:

20 Q Dr. Karl, is there -- you testified on
21 the plant site there are only juvenile carcass and
22 bone fragment. Is the applicant providing some
23 sort of mitigation for tortoises that might
24 transiently be on the site?

25 DR. KARL: Yes, they are. Because there

1 is the possibility that, because there are
2 tortoises in adjacent habitat, there is the
3 possibility that a tortoise could occur onsite.
4 So the project is providing 20 acres of
5 compensation for -- well, it's 100 acres, because
6 of the Mojave ground squirrel, it's 100 acres of
7 compensation.

8 MR. BABULA: Okay, thank you. And then
9 for Ms. Guigliano, same question regarding
10 burrowing owls. Is there mitigation for burrowing
11 owls proposed?

12 MS. GUIGLIANO: Yes. Mitigation for
13 burrowing owls is proposed assuming two pairs.
14 And again that has to be clarified during the
15 preconstruction survey, but they'd be relocated,
16 includes 20 acres of offsite compensatory
17 mitigation.

18 MR. BABULA: Okay. And is there also a
19 requirement that before Beacon starts construction
20 of any of these pipelines, whether it be -- well,
21 especially the Rosamond pipeline, that there be
22 surveys done?

23 MS. GUIGLIANO: That's our
24 understanding, yes.

25 MR. BABULA: Okay. No further

1 questions.

2 HEARING OFFICER CELLI: Redirect?

3 MS. LUCKHARDT: None.

4 HEARING OFFICER CELLI: Thank you. That
5 closes biology then. No? I've got --

6 MS. LUCKHARDT: No.

7 HEARING OFFICER CELLI: -- pointing to
8 me shaking their head no, -- staff --

9 (Parties speaking simultaneously.)

10 HEARING OFFICER CELLI: -- three
11 witnesses that we haven't heard from.

12 MR. BABULA: They just wanted to see
13 what this is like.

14 HEARING OFFICER CELLI: I'm sorry --

15 MR. BABULA: Okay.

16 HEARING OFFICER CELLI: So with that,
17 staff's correct.

18 MR. BABULA: Okay. Quick procedural
19 question. Regarding the backgrounds of Julie and
20 Judy, because they weren't available, I couldn't
21 get you anything. In your order you wanted it
22 before, so I could give -- have them just give a
23 quick spiel on their backgrounds to establish. Of
24 if everybody will stipulate, since they are
25 employed by the Service and Fish and Game?

1 HEARING OFFICER CELLI: So, are their
2 r,sum,s in the record yet?

3 MR. BABULA: I -- no.

4 HEARING OFFICER CELLI: They're not.

5 MR. BABULA: Because I had said Judy was
6 in Florida and not available. And I couldn't get
7 anything from her. And Julie's came in too late
8 for me to --

9 HEARING OFFICER CELLI: The question is,
10 applicant and CURE, whether you'd be willing to
11 stipulate to the expertise of these two witnesses,
12 or do you want to hear a long, drawn out
13 recitation of all of the things that make them
14 expert in their fields.

15 Applicant, I'll let you go first.

16 MS. LUCKHARDT: We're happy to
17 stipulate.

18 HEARING OFFICER CELLI: Okay. CURE?

19 MS. GULESSERIAN: CURE will stipulate.

20 HEARING OFFICER CELLI: Thank you. So,
21 we will deem as stipulated that these experts are
22 experts. You might want to give a little quick
23 one sentence on what they're field is so that we
24 know what --

25 MR. BABULA: Okay.

1 DIRECT EXAMINATION

2 BY MR. BABULA:

3 Q Why don't we start off with that.

4 MS. VANCE: I have a bachelors and
5 masters degree in biology with ecology from CSU
6 Fresno. And I've worked for the Department of
7 Water Resources for six years. And then for the
8 past five and a half I've been with the Department
9 of Fish and Game supervising the Endangered
10 Species and CEQA and Timber Unit. And now Program
11 Manager over all of our -- programs for our 12-
12 county region, which includes streambed
13 alteration, FERC, water rights, and our special
14 renewable energy unit.

15 HEARING OFFICER CELLI: And you're Julie
16 Vance, right?

17 MS. VANCE: Correct. Sorry.

18 HEARING OFFICER CELLI: You're with
19 CDFG?

20 MS. VANCE: Correct.

21 HEARING OFFICER CELLI: Which is
22 certainly -- that was way more information than we
23 needed, because we've already deemed that you're
24 an expert.

25 MS. VANCE: Okay.

1 HEARING OFFICER CELLI: So, we won't
2 need your expertise, per se, either. We just need
3 to know what your title is.

4 MS. HOHMAN: I'm a Fish and Wildlife
5 biologist for the U.S. Fish and Wildlife Service.
6 I've been working on desert issues in the Ventura
7 Office since 1990, specifically desert tortoise.
8 And I was one of the co-authors of the (inaudible)
9 the Desert Tortoise as a Threatened Species under
10 the federal Endangered Species Act.

11 HEARING OFFICER CELLI: Thank you.

12 MS. SPEAKER: You're clicking.

13 HEARING OFFICER CELLI: The record
14 should reflect that the court reporter's tape
15 recorder was clicking. I was not clicking.

16 (Laughter.)

17 HEARING OFFICER CELLI: With that,
18 staff, please.

19 MR. BABULA: Okay. This is for Dr.
20 Sanders. Please describe your overall conclusions
21 regarding the Beacon project impact to biological
22 resources.

23 DR. SANDERS: Well, as you've already
24 heard, most of the Beacon site is disturbed and
25 supports little habitat for Mojave ground squirrel

1 or desert tortoise. But we could not rule out the
2 possibility of there being desert tortoise or
3 Mojave ground squirrel occurring there.

4 So we consulted with Fish and Game and
5 Fish and Wildlife Service; developed conditions of
6 certification that would avoid or minimize any
7 impacts to desert tortoise and Mojave ground
8 squirrel, and also provided compensation.

9 And with all those conditions of
10 certification in the final staff assessment, staff
11 concluded that any impacts to biological
12 resources, including listed species, would be
13 mitigated to less than significant levels.

14 MR. BABULA: In developing these
15 conditions did you collaborate with Fish and Game
16 and Fish and Wildlife?

17 DR. SANDERS: We did.

18 MR. BABULA: And then regarding the
19 Mojave ground squirrel and the state-listed
20 species, did you find that the mitigation was
21 fully mitigating any impact?

22 DR. SANDERS: We did.

23 MR. BABULA: Okay. So I know you've
24 read all the testimony and you've had your
25 supplemental testimony; we've heard the testimony

1 of Dr. Bias; we've heard all the testimony from
2 the applicant.

3 So at this point is there anything else
4 you'd like to add to the record regarding
5 biological resources?

6 DR. SANDERS: -- the testimony we've
7 heard?

8 MR. BABULA: Right.

9 DR. SANDERS: Yeah. I just want to
10 clarify one thing that Dr. Bias said, because I
11 had the impression, and perhaps others did also,
12 that there'd be 4000 acres of impacts associated
13 with the Rosamond pipeline.

14 And I just want to clarify, and I think
15 you're talking about indirect impacts for the most
16 part, but I want to clarify that we studied an
17 area that was 22 miles long, the point from the
18 Rosamond water treatment plant to the point of
19 delivery, 2000 feet wide. And we mapped
20 vegetation in that area.

21 But actual impacts of the pipeline are
22 going to be about 11 acres to the native plant
23 communities, to creosote bush scrub and atroplex
24 scrub. Only about two acres of that will be
25 permanent, because it's a buried pipeline.

1 There's a 25-foot construction corridor
2 that we used for the basis for that impact
3 analysis. And that is being -- and we're assuming
4 that Mojave ground squirrel and desert tortoise
5 could occur along the pipeline, because there's
6 good habitat, especially in the norther portions
7 of that pipeline.

8 So the same things that are in place --
9 for the same avoidance, minimization measures that
10 are in place for the transmission line, where
11 there is good habitat west of 14, are also in
12 place for the Rosamond pipeline.

13 So all the same avoidance, minimization
14 measures, having a designated biologist present
15 when there's any construction, that's happening.
16 We're also mitigating on a three-to-one ratio for
17 the habitat west of state route 14. And that's
18 contained in bio-21, the Rosamond pipeline
19 mitigation.

20 Also there are indirect impacts which we
21 addressed in appendix A. All this is contained in
22 appendix A of the FSA, all the things that I'm
23 telling you about.

24 Staff did a reconnaissance survey,
25 vegetation, mapping, assessment of impacts, and

1 we've got measures in there, the same measures
2 that apply to minimizing indirect impacts for the
3 plant site are also in place. Weed control, dust
4 suppression, all the things that you would have to
5 do to protect biological resources, those also are
6 in place for the Rosamond pipeline.

7 So, staff has concluded that impacts to
8 biological resources associated with the
9 construction of that pipeline have been mitigated
10 to less than significant levels. Fully mitigated
11 to the listed species.

12 I have one more thing to add, and that
13 was I'm very sorry to all of you for my
14 inconvenient absence this morning. I know it
15 pushed us all back four hours in the queue.
16 Especially to my fellow biologists who thought
17 they'd be home by now. So, I'm sorry.

18 MR. BABULA: Julie Vance, would you like
19 to add any information and clarify testimony that
20 occurred earlier?

21 HEARING OFFICER CELLI: That isn't
22 cumulative, of course. So basically anything new
23 that we haven't heard yet.

24 (Laughter.)

25 MS. VANCE: I just wanted to clarify

1 regarding the requirements of the California
2 Endangered Species Act, and what full mitigation
3 means.

4 CESA requires that the impacts of the
5 taking be fully mitigated. It does not specify
6 regarding the habitat. And the state definition
7 of take is less broad than that in the federal
8 Endangered Species Act. And it's defined in
9 section 86 of the Fish and Game Code, which is --
10 take is hunt, pursue, catch, capture or kill or
11 any attempt to do so. So it's very much regarding
12 the direct impacts to the animal, as opposed to
13 habitat.

14 Now, for a fossorial animal like
15 tortoise and squirrel, we do usually use habitat
16 kind of as a proxy because you have to assume when
17 you can't find all the animals that you have to
18 make some assumptions about where they are and how
19 many.

20 However, we do evaluate them on a case-
21 by-case basis. And in the circumstance where the
22 habitat is quite degraded, we didn't, you know,
23 just make an assumption that there's X impacts to,
24 you know, a certain acreage and go with that.

25 We did look at how many animals we

1 thought that particular habitat could support. So
2 it wasn't only, you know, just as an example,
3 impacting ten acres and therefore you mitigate
4 with 40. It was actually taking into account how
5 many actual animal the habitat could likely
6 support.

7 MR. BABULA: Judy, do you have anything
8 you'd like to add based on the testimony you've
9 heard today?

10 MS. HOHMAN: No, unless you want me to
11 just reiterate --

12 HEARING OFFICER CELLI: Well, just to be
13 clear, while we have these representatives there
14 were some questions earlier -- there was a
15 question about the Endangered Species Act,
16 California, and then there was something asked
17 about the --

18 MR. BABULA: Whether they're consulting
19 with the Service?

20 HEARING OFFICER CELLI: Yes. I'm just
21 trying to remember. I guess maybe we'll hear
22 about it on cross, but there was some need for
23 clarification from USFWS --

24 MR. BABULA: I could ask. Did the
25 applicant doing a section 10 consultation with the

1 Fish and Wildlife Service?

2 MS. HOHMAN: Yes, they are. We're
3 consulting with them on a section 10(a)(1)(B)
4 incidental take permit.

5 HEARING OFFICER CELLI: Okay.

6 MR. BABULA: I have no further
7 questions.

8 HEARING OFFICER CELLI: Thank you.
9 Applicant, cross, please. And do you remember
10 exactly what those things were earlier that we
11 needed their expertise on? I'd appreciate it if
12 you asked those questions.

13 MS. LUCKHARDT: I believe they've
14 answered them. So, at this point I just have a
15 couple of questions.

16 CROSS-EXAMINATION

17 BY MS. LUCKHARDT:

18 Q Ms. Vance, do you support the analysis,
19 conclusions and mitigation contained in the final
20 staff assessment and the revised conditions of
21 certification? And when I talk about the revised
22 conditions of certification, I'm referring to
23 exhibit number 338.

24 MS. VANCE: Yes, I do.

25 MS. LUCKHARDT: And, Ms. Hohman, the

1 same question. Do you support the analysis,
2 conclusions and mitigation contained in the
3 biological resources section of the final staff
4 assessment and the revised conditions of
5 certification? Again, I'm referring to exhibit
6 number 338.

7 MS. HOHMAN: Yes, I do.

8 MS. LUCKHARDT: Thank you. I have no
9 further questions.

10 HEARING OFFICER CELLI: Thank you.

11 Cross by CURE.

12 MS. GULESSERIAN: Thank you.

13 CROSS-EXAMINATION

14 BY MS. GULESSERIAN:

15 Q Ms. Sanders, can you describe your
16 understanding of the length of the potential
17 recycled water pipeline from Rosamond?

18 DR. SANDERS: It's total, I believe, 39
19 miles. And the southern 23 miles of that are what
20 we surveyed.

21 MS. GULESSERIAN: Okay. For the
22 southern 23 miles, is it accurate that there are
23 two potential routes for the southern portion of
24 the route?

25 DR. SANDERS: We considered just one of

1 those routes. That was the one we analyzed. I
2 don't know what the status of the two routes;
3 someone else would have to answer that.

4 MS. GULESSERIAN: Okay.

5 DR. SANDERS: There's another route
6 inside Edwards Air Force Base, but we didn't
7 analyze that.

8 MS. GULESSERIAN: Okay, so for
9 clarification the FSA does not analyze the
10 pipeline route through the Air Force Base?

11 DR. SANDERS: Correct.

12 MS. GULESSERIAN: Okay. Can you
13 describe your understanding of the potential
14 pipeline from California City?

15 DR. SANDERS: I believe it's 17. what, 6
16 miles, is that correct? Yeah. Oh, by the way,
17 let me clarify. We do specify in the appendix A
18 of the final staff assessment that there is an
19 analysis being undertaken for the Edwards Air
20 Force Base line.

21 MS. GULESSERIAN: Okay. Are you
22 familiar with that analysis that's being
23 undertaken --

24 DR. SANDERS: No.

25 MS. GULESSERIAN: -- by the --

1 DR. SANDERS: We refer to it, though, so
2 it -- understand there is an analysis being
3 undertaken for that alternative.

4 MS. GULESSERIAN: So if you've referred
5 to it in your FSA, let's look at exactly what you
6 state about it.

7 MR. SOLORIO: Just wanted to note that
8 Edwards did a FONSI on the segment going through
9 the base. And that was docketed early on and is
10 included as part of the analysis. So technically
11 we did not analyze it, but we did refer to the
12 fact that it was analyzed by Edwards, and
13 therefore could be -- that particular segment.

14 MS. GULESSERIAN: Okay. So are you
15 familiar with that document that the Air Force
16 Base did for that segment of the pipeline?

17 MR. SOLORIO: I'm familiar with the
18 federal form that they submitted to us and --

19 MS. GULESSERIAN: That was docketed on
20 the website?

21 MR. SOLORIO: Correct.

22 MS. GULESSERIAN: Okay. May I enter
23 this exhibit into the record? It was -- we have
24 just established that they're familiar with the
25 document. It's cited in the FSA. It was served

1 to the parties last week as a potential exhibit.

2 What it is is the -- it's docketed on
3 the website. It's the Air Force Base's exemption
4 from environmental review for this pipeline
5 segment.

6 HEARING OFFICER CELLI: Okay, now,
7 applicant, any objection?

8 MS. LUCKHARDT: No objection.

9 HEARING OFFICER CELLI: I remember
10 seeing this come across dockets some time ago.
11 Okay, no objection. And we are at 638, CURE's
12 exhibits. So this would be exhibit 639.

13 MS. HEAD: For the sake of the
14 transcript, did Mr. Solorio mention that that's
15 who was speaking?

16 MR. SOLORIO: If you want me to say it
17 now, --

18 MR. BABULA: She has his card.

19 MS. HEAD: I just think it needs to be
20 in the transcript so we know who was talking.

21 HEARING OFFICER CELLI: And what's your
22 name?

23 MS. HEAD: I'm sorry. I'm Sara Head.

24 HEARING OFFICER CELLI: Sara Head.

25 That's who that was. And are you aware that that

1 was Eric Solorio who was speaking? Yes. The
2 court reporter is writing down the names.

3 MS. HEAD: Okay.

4 HEARING OFFICER CELLI: Is pretty much
5 aware of anyone who's sitting at the tables. And
6 if not, she'll signal. Thank you for that.

7 We were at exhibit 639. I'm going to
8 need a copy of that.

9 (Pause.)

10 HEARING OFFICER CELLI: So CURE's
11 exhibit 639 for identification, which is a request
12 for environmental impact analysis signed by Keith
13 Dias on August 21, 2009, with an attachment,
14 requirements checklist, which is three pages. And
15 on the back signed by Janet Lorraine, a
16 declaration by Janet Lorraine.

17 MS. GULESSERIAN: That is a declaration
18 that it's a true and correct copy of the printout
19 from the dockets.

20 HEARING OFFICER CELLI: Okay. No
21 objections, that'll be received into evidence as
22 639.

23 MS. GULESSERIAN: Okay, so is this --

24 HEARING OFFICER CELLI: And it's now
25 five after 6:00 --

1 MS. GULESSERIAN: Is this the
2 environmental -- sorry, document -- speed it
3 along.

4 HEARING OFFICER CELLI: All right.

5 MS. GULESSERIAN: -- that you're
6 referring to? Exemption from environmental
7 review.

8 MR. SOLORIO: Yes, it is.

9 MS. GULESSERIAN: Okay. Besides this
10 exemption from environmental review that the Air
11 Force did, did you conduct any analysis of
12 potential impacts, significant impacts, under CEQA
13 for this segment of the pipeline route through the
14 Air Force Base?

15 DR. SANDERS: Who is the question for?

16 MS. GULESSERIAN: For you.

17 DR. SANDERS: So the question is did we
18 analyze other CEQA impacts?

19 MS. GULESSERIAN: Yes.

20 DR. SANDERS: I did not. I did the
21 biology report.

22 HEARING OFFICER CELLI: That's Ms.
23 Sanders who's speaking now.

24 MS. GULESSERIAN: And I think we
25 answered this, but just to clarify, you did -- in

1 the biological assessment did you analyze
2 biological resource impacts from this segment of
3 the route through the Base?

4 DR. SANDERS: No, we did not.

5 MS. GULESSERIAN: In the FSA did you
6 analyze potentially significant impacts for the
7 northern 17 miles of the route from Rosamond?

8 DR. SANDERS: If you mean about the same
9 as we did for the T-line and for the plant site,
10 yes.

11 MS. GULESSERIAN: Okay. Can you direct
12 me to where your conclusions are regarding that
13 portion of the pipeline segment?

14 DR. SANDERS: I don't know that we
15 necessarily separated them out. It's entirely the
16 disturbed roadbed, a shoulder of the road. So the
17 mitigation measures that apply to the plant site,
18 preconstruction surveys for owls, desert tortoise
19 apply to the proposed pipeline, as well.

20 There was no habitat to be mitigated for
21 in that area because there was no native habitat.
22 So it's not included for compensatory mitigation.

23 I didn't break it down by components of
24 the project like that.

25 MS. GULESSERIAN: Okay, so in appendix A

1 when we have mapping of the entire pipeline route,
2 there is no similar mapping of vegetation type or
3 occurrence of species for --

4 DR. SANDERS: You'll find that in the
5 AFC.

6 MS. GULESSERIAN: So the applicant is
7 the one that has information regarding the
8 northern 17 miles of the pipeline route?

9 DR. SANDERS: Correct, and that's what
10 we used for our analysis.

11 MS. GULESSERIAN: Okay. Is it correct
12 that in the --

13 HEARING OFFICER CELLI: I'm going to
14 give another three more minutes of this, and then
15 we need to move on. This is still bio.

16 DR. SANDERS: Let me clarify that this
17 analysis in appendix A, we carried over the
18 analysis that we had in our FSA to appendix A, so
19 we covered the entire alignment. It's just that
20 we didn't go into detail discussing it since it
21 had already been addressed in the body of the
22 report.

23 MS. GULESSERIAN: In the body of which
24 report?

25 DR. SANDERS: The PSA addressed it

1 because at the time it was a gas pipeline. In the
2 FSA it was abandoned as a gas pipeline, but the
3 same impact would be occurring as a water
4 pipeline. So the impacts associated with pipeline
5 construction were addressed.

6 MS. GULESSERIAN: So it was evaluated in
7 the PSA, but wasn't carried over to the FSA?

8 DR. SANDERS: Yeah, it was. The FSA
9 includes appendix A, which incorporated the
10 analysis for the 17.6 miles of the northern
11 pipeline.

12 MS. GULESSERIAN: Okay, so I've looked
13 at appendix A and it says that, we did not
14 evaluate the 17-mile portion of the Rosamond
15 pipeline because it was evaluated by ESEP 2009.
16 Are you referring to an evaluation by the
17 applicant?

18 DR. SANDERS: Right, the applicant
19 analyzed the impacts, provided vegetation maps,
20 provided rare plant surveys. We used that in our
21 analysis in the preliminary staff assessment. And
22 the final staff assessment incorporates all the
23 measures that the PSA did, as well. The PSA
24 required avoidance and minimization measures based
25 on the surveys done on the 17.6-mile pipeline.

1 MS. GULESSERIAN: Okay, I'm looking for
2 the independent analysis of the northern 17 miles
3 of the Rosamond pipeline segment in the FSA. And
4 if you could help me, direct me to where that is I
5 would appreciate it.

6 HEARING OFFICER CELLI: -- question?

7 MS. LUCKHARDT: If it would help to
8 clarify the record, exhibit 87 is the Beacon Solar
9 Energy Project botanical and wildlife special
10 status species 2008 spring survey report.

11 MS. GULESSERIAN: I'm at --

12 MS. LUCKHARDT: And that's the place at
13 which the results of the survey effort on the gas
14 pipeline are reported, at least from Beacon's
15 side.

16 HEARING OFFICER CELLI: Thank you.

17 MS. GULESSERIAN: And so I'm looking to
18 find out where the evaluation by staff is
19 regarding what Beacon has submitted to staff.

20 DR. SANDERS: Our analysis was in the
21 PSA as to the impacts of construction of the
22 pipeline, 17.6 miles. And this map -- the
23 analysis in the PSA, and we used the information
24 from the PSA to come to our conclusions in the
25 FSA.

1 MS. GULESSERIAN: Okay, I'm going to
2 move on. Is your assessment of potential impacts
3 based on protocol surveys -- this is for the 23
4 miles of Rosamond pipeline -- is your assessment
5 of potential impacts based on protocol surveys for
6 desert tortoise and Mojave ground squirrel and
7 western burrowing owl?

8 DR. SANDERS: Yes.

9 MS. GULESSERIAN: You did --

10 DR. SANDERS: The ones conducted by the
11 applicant, correct.

12 MS. GULESSERIAN: You did protocol --

13 DR. SANDERS: No, no, I'm sorry --

14 MS. GULESSERIAN: -- the applicant did
15 protocol surveys?

16 DR. SANDERS: -- we relied on their
17 results, correct.

18 MS. GULESSERIAN: Okay. So you relied on
19 results of protocol surveys for the 23 miles of
20 the Rosamond pipeline segment?

21 DR. SANDERS: Excuse me, I apologize for
22 that. No, we assumed presence for desert tortoise
23 and for Mojave ground squirrel. Nobody assumed
24 burrowing owls are likely to occur there, as well.

25 (Parties speaking simultaneously.)

1 HEARING OFFICER CELLI: Is there
2 anything else, because that is already in their
3 testimony, so --

4 MS. GULESSERIAN: I'll skim through and
5 see if there's any vital questions.

6 HEARING OFFICER CELLI: Thank you.

7 MS. GULESSERIAN: Is it correct that
8 staff found impacts to only 11 acres?

9 DR. SANDERS: That's correct, temporary
10 impacts.

11 MS. GULESSERIAN: And you found direct
12 -- those are addressing direct impacts?

13 DR. SANDERS: Correct, direct impacts.

14 MS. GULESSERIAN: Okay. Is it -- in
15 table 5 you show that 11 acres --

16 DR. SANDERS: Table 5 of appendix A?

17 MS. GULESSERIAN: Yes. You show 11
18 acres of direct impacts to the creosote bush scrub
19 and two phases of saltbush scrub. Are those the
20 only plant communities that you're providing
21 mitigation for?

22 DR. SANDERS: The other -- there is some
23 creosote bush scrub and some saltbush scrub that
24 was highly disturbed, so, yes, we're providing
25 mitigation for the good quality habitat that we

1 thought supported the Mojave ground squirrels or
2 desert tortoise.

3 MS. GULESSERIAN: Okay. Is there any --
4 you have maps there that you're referring to which
5 are attached to appendix A --

6 DR. SANDERS: Um-hum.

7 MS. GULESSERIAN: -- that show a much
8 larger area of where this habitat is.

9 DR. SANDERS: Um-hum.

10 MS. GULESSERIAN: Where is the -- maps
11 are similar quantification of how it got narrowed
12 down to 11 acres?

13 DR. SANDERS: We describe in the method
14 system what assumptions we used to calculate
15 impacts. And we assumed a 25-foot corridor of
16 impacts, and we overlaid that on the vegetation to
17 come up with that calculation you see in table 5.

18 The permanent impacts were the ones that
19 were, I think, the booster station. It was some
20 pumping station, I can't recall, some feature that
21 wasn't going to be as part of the buried pipeline.

22 MS. GULESSERIAN: Okay, --

23 HEARING OFFICER CELLI: That could be
24 found in exhibit 500.

25 MS. GULESSERIAN: Moving on, the 23

1 miles of Rosamond pipeline, the FSA states that 21
2 special status plants have the potential to occur
3 in table 2.

4 Of those plants do you know how many
5 flower outside of the July season, or the three
6 days in July that you looked at the site?

7 DR. SANDERS: I don't know off the top
8 of my head, but the flowering periods are the
9 species that we considered. There's a table with
10 that information, and we are requiring
11 preconstruction surveys for those plants.

12 MS. GULESSERIAN: The FSA states that
13 spring surveys would be conducted in spring 2010.
14 Did this occur?

15 DR. SANDERS: I believe that was --
16 wasn't that revised? Yes, that was one of the
17 revisions -- the copy I've got is the old copy,
18 but I think that was one of the conditions that
19 was revised.

20 HEARING OFFICER CELLI: And given that
21 spring 2010 started yesterday, that's not a lot of
22 time. So --

23 MS. GULESSERIAN: Okay. So the
24 information from spring surveys is not in the FSA
25 yet?

1 DR. SANDERS: Spring surveys, 2010
2 surveys is definitely not in the FSA.

3 MS. GULESSERIAN: Okay. The special
4 status species plants haven't been surveyed or
5 mapped, is it possible to have direct impact on
6 those species?

7 DR. SANDERS: That was a concern of
8 ours, so we worked with Mr. LaMoreaux, I believe
9 is how he pronounces his name. He said he had
10 sufficient flexibility in the way the pipe would
11 be aligned. He can shift it, and he can shift the
12 construction of work, so -- can shrink it to 16
13 feet. So we concluded that if we found a special
14 status plant occurrence along the pipeline we
15 could avoid it.

16 You do understand it's going down a dirt
17 road? At least of the area that's been disturbed
18 is already just a dirt road.

19 MS. GULESSERIAN: Can you clarify who it
20 is you just referred to?

21 DR. SANDERS: Oh, excuse me, one of the
22 co-authors, Carolyn Chainey-Davis was the botanist
23 who conducted the surveys and did the vegetation
24 mapping.

25 MS. GULESSERIAN: And so just to

1 clarify, did you just say there's enough
2 flexibility to move the pipeline?

3 DR. SANDERS: Apparently so, apparently
4 you can shift it enough --

5 MS. GULESSERIAN: So wouldn't that
6 change --

7 DR. SANDERS: -- to avoid an occurrence
8 of --

9 MS. GULESSERIAN: Wouldn't that change
10 your analysis of the narrowed down only 11 acres
11 are going to be impacted, have direct impacts?
12 Wouldn't that change that analysis?

13 DR. SANDERS: No. If you're within a
14 25-foot-wide corridor and you can shift it within
15 that corridor and shrink it to a narrower pipeline
16 construction zone, that wouldn't change the
17 analysis.

18 MS. GULESSERIAN: Well, are there any
19 maps that show where this 11 acre specifically is,
20 or is it just your table 5?

21 DR. SANDERS: These maps show the
22 distribution of the plant size and it shows the
23 path of the pipeline.

24 MS. GULESSERIAN: Right. And it shows
25 much more than, it's not the number in front of

1 me, but much more than 11 acres being potentially
2 impacted.

3 I think you heard Mr. Bias' testimony
4 that it shows potential impact is 4000 acres of
5 plant --

6 DR. SANDERS: That was the part that
7 confused me.

8 MS. GULESSERIAN: -- and then it
9 narrowed down to 11 acres. So I'm wondering where
10 those 11 acres exactly are that you've calculated.
11 At least, is it in the FSA?

12 DR. SANDERS: In the appendix A -- let
13 me clarify. You're not asking about how the 4000
14 acres shrank down to 11 acres? Are you asking
15 that?

16 MS. GULESSERIAN: Well, that's what I
17 asked earlier. And now we're back to it. If you
18 found 11 acres is going to be impacted, only 11
19 acres is going to be impacted because you're just
20 looking strictly at direct pipeline construction
21 impacts only, --

22 DR. SANDERS: Um-hum.

23 MS. GULESSERIAN: -- I'm wondering where
24 those 11 acres are, and then when you --

25 DR. SANDERS: Okay, let me clarify.

1 MS. GULESSERIAN: -- shift the pipeline
2 to another area, how do you know that it's covered
3 within that very narrow mitigation or impact area
4 that you found --

5 DR. SANDERS: Let me clarify how the --

6 MS. GULESSERIAN: -- without anything to
7 look at in that section?

8 DR. SANDERS: Let's make sure everyone
9 understands. The 4000 acres is the area that we
10 mapped, vegetation, correct? So that's clear
11 enough. That's not an impact area, that's just a
12 1000-foot-wide, or the 200-foot-wide corridor in
13 which we mapped vegetation.

14 Then within that we estimated a 25-foot-
15 wide corridor down the middle of that. And within
16 that we mapped impacts to native vegetation.

17 Now, there are more than 11 acres of
18 impacts. There was something like 90 acres of
19 impacts, mostly they're dirt roads.

20 So the amount that's a permanent impact,
21 the 1.84 acres or so permanent impacts, were the
22 areas that will be occupied by permanent
23 structures. And there's some flexibility in how
24 that can be arranged.

25 HEARING OFFICER CELLI: I'm glad we

1 clarified that, because that was already testified
2 to earlier. It's now 20 after 6:00, and I think
3 that we've really got to move on.

4 So, if we can, please, take a look at
5 your notes. See if there's anything -- we've been
6 pretty generous in the area of biology. This
7 started three hours ago. It was supposed to be an
8 hour and 40 minutes.

9 MS. GULESSERIAN: If no surveys have
10 been conducted what is the basis for the FSA
11 appendix A statement that special status plants
12 could potentially occur outside, but adjacent to
13 the construction footprint, where roads abut
14 undisturbed habitat and creosote bush scrub and
15 saltbush scrub habitat? On page 4.2-150.

16 DR. SANDERS: You know, I don't have a
17 page 4.2-150. Are you talking about the FSA or
18 the appendix? I think I have different numbering.

19 That's correct. You could find special
20 status plants adjacent to the construction
21 footprint, and they would need protection. That's
22 one of the reasons we're requiring surveys is so
23 you can implement protection from inadvertent
24 impacts. You fence them and you make everybody
25 aware of them, and you stay away from them.

1 MS. GULESSERIAN: Okay, so do you know
2 yet where those special status plant species are
3 located?

4 DR. SANDERS: No; you'd need surveys to
5 find that out.

6 MS. GULESSERIAN: Okay.

7 HEARING OFFICER CELLI: We have surveys
8 coming up, is that correct, in the spring of this
9 year?

10 DR. SANDERS: That is up to the
11 applicant, when they want to conduct their
12 surveys. This no longer specifies it has to be in
13 spring of 2010, the revised condition.

14 HEARING OFFICER CELLI: Very good. Is
15 there anything else, Ms. Gulesserian?

16 MS. GULESSERIAN: What does the
17 evaporation pond netting mitigate?

18 DR. SANDERS: Potential impacts from a
19 couple different sources. One, birds can drink or
20 forage from the pond water and it can have
21 concentrations of toxic elements or salt, as in
22 Harper Lake where there's some water fowl death
23 from salt toxicosis. So it's keeping birds out of
24 the water and any harm.

25 It's also preventing ravens from being

1 attracted to the site, and then sticking around
2 and preying on desert tortoise juveniles nearby.

3 MS. GULESSERIAN: And how does it
4 prevent ravens and other migratory birds from
5 being attracted to the area?

6 DR. SANDERS: Well, I think they are
7 still attracted. And I think we had some measures
8 in there --

9 MS. GULESSERIAN: Thank you. I have no
10 further questions.

11 HEARING OFFICER CELLI: Thank you. Any
12 redirect?

13 MR. BABULA: No.

14 HEARING OFFICER CELLI: Thank you. So
15 that takes care of biology.

16 MS. GULESSERIAN: We have other -- I
17 have no further questions for Ms. Sanders.

18 HEARING OFFICER CELLI: You know, it's
19 20 after 6:00. We started at --

20 MS. GULESSERIAN: Just a few questions
21 of the agency.

22 HEARING OFFICER CELLI: What are the
23 questions? I'd like to hear the questions.

24 MS. GULESSERIAN: Okay.

25 HEARING OFFICER CELLI: So maybe we can

1 speed this up.

2 MS. GULESSERIAN: I would like to know
3 from Fish and Wildlife Service what they define
4 sign as. We were not able to gather from the
5 applicant what the sign was, whether sign
6 indicated presence of the species.

7 So, since desert tortoise is a federally
8 listed species, that would be in the Fish and
9 Wildlife Service's area of expertise.

10 HEARING OFFICER CELLI: We have
11 testimony that sign doesn't necessarily mean that
12 there's a presence. We've already heard from Dr.
13 Karl.

14 MS. GULESSERIAN: I would like to know
15 whether the Fish and Wildlife Service agrees or
16 disagrees, then.

17 HEARING OFFICER CELLI: So, let's hear
18 on that.

19 EXAMINATION

20 BY HEARING OFFICER CELLI:

21 Q Do you agree, did you hear Dr. Karl's
22 testimony.

23 MS. HOHMAN: Yes.

24 HEARING OFFICER CELLI: Do you agree or
25 disagree? Would you explain your position on the

1 presence of sign for desert tortoise?

2 MS. HOHMAN: I agree with Dr. Karl the
3 presence of sign in all cases -- can you hear me
4 now?

5 HEARING OFFICER CELLI: Please speak
6 right into it.

7 MS. HOHMAN: Okay. The presence of sign
8 is an indication that tortoises might be present
9 and might be using the area. Not necessarily an
10 indication that they are resident animals at the
11 site.

12 MS. GULESSERIAN: Okay, thank you.

13 CROSS-EXAMINATION

14 BY MS. GULESSERIAN:

15 Q So it's an indication of presence, but
16 not an indication of --

17 MS. HOHMAN: Residency.

18 MS. GULESSERIAN: Thank you.

19 HEARING OFFICER CELLI: I just wanted to
20 know if you had any further questions. And one of
21 those questions --

22 MS. GULESSERIAN: Since I'm not able to
23 ask them, I just have to do a quick skim of them,
24 if you wouldn't mind.

25 Have you completed your review of the

1 incidental take permit application?

2 MR. BABULA: I'm going to object to
3 questions about that. This is not relevant to our
4 proceeding, that's a federal action.

5 HEARING OFFICER CELLI: Where are you
6 going?

7 MS. GULESSERIAN: The Commission needs
8 to determine compliance with LORS. The final
9 staff assessment does not make a conclusion
10 regarding whether there is consistency with the
11 federal Endangered Species Act. And I'm trying to
12 figure out whether we're done with that and we can
13 correct the FSA, or whether it's still
14 outstanding, so that the Commission can make a
15 decision on this matter.

16 HEARING OFFICER CELLI: My experience
17 has been in the past that biology has a table of
18 the LORS, and it says whether there is compliance
19 with the LORS. Is there any mention of compliance
20 with the federal Endangered Species Act in the
21 FSA?

22 MR. BABULA: Yes, it's in there.

23 HEARING OFFICER CELLI: That's what I
24 would imagine.

25 MS. GULESSERIAN: If they want to not do

1 anything further, that's fine with me.

2 HEARING OFFICER CELLI: My concern is
3 that you're asking questions that are readily
4 available. They're available to all parties
5 equally. And it isn't covering new ground. So I
6 just -- I'm trying to get the most out of your
7 cross-examination without having to belabor points
8 that have already been made and we cover ground
9 we've already covered.

10 MS. GULESSERIAN: I have a question for
11 Julie Vance, one question.

12 HEARING OFFICER CELLI: Regarding?

13 MS. GULESSERIAN: And that would be
14 regarding Leitner's assessment of habitat for
15 Mojave ground squirrel. And that would be have
16 there been high numbers of Mojave ground squirrel
17 detected via trapping in areas not predicted to
18 support Mojave ground squirrel based on habitat
19 and soil type, alone?

20 MS. VANCE: Yes, there has.

21 MS. GULESSERIAN: Thank you. No further
22 questions.

23 HEARING OFFICER CELLI: Thank you.
24 Redirect?

25 MR. BABULA: I have nothing further.

1 HEARING OFFICER CELLI: Okay. Now, the
2 record is closed on biology. We will take a
3 break. Now there's pizza available out in the
4 lobby, I guess. We can continue to go forward.

5 What I'd like to do at this time is open
6 up the podium for public comment. It's now 6:30
7 about. Let's see if we can get -- how many people
8 here are members of the public that wanted to make
9 a comment? I've got a show of hands of three
10 people.

11 MR. BABULA: We still have hazardous
12 material, --

13 HEARING OFFICER CELLI: Yeah, I
14 understand that, but I'm going to get rid of some
15 of -- there are people that have been staying,
16 waiting around a long time to make public comment.
17 I think they need to have an opportunity to do
18 that.

19 I just want to say I'm not asking you to
20 come up yet. I just want to see if you're here.
21 Is Corky Corcoran here? Stay here, Corky. Jack
22 Martin? Jack Martin is gone. Kim Collins, are
23 you here? That's fine, stay here.

24 Eleanor Owens, are you here? Not.
25 Wally Melendez, are you here? Okay, he's no

1 longer here. And then Dawn Martin, are you here?

2 Dawn Martin is here, also.

3 Okay. What we're going to do is the
4 Chairman's going to stay up here and we're going
5 to hear public comment. If people want to go grab
6 themselves a pizza, they can do that. And we are
7 going to get back on the record in about 15
8 minutes, and we will be taking evidence on
9 hazardous waste.

10 We also sated that there was going to be
11 public comment at 7:00 p.m. So if any members of
12 the public are wanting to make a comment at 7:00,
13 we'll give them that opportunity.

14 I also want to get online and see if
15 there's anyone online.

16 So, with that, I'm going to open the mic
17 for Lorelei Oviatt, who's here from the County of
18 Kern Planning Department.

19 MS. LUCKHARDT: I'm assuming despite
20 your comments a moment ago that public comment
21 will be on the record.

22 HEARING OFFICER CELLI: Yes, public --
23 are we not on the record? We're on the record.

24 MS. LUCKHARDT: Okay.

25 HEARING OFFICER CELLI: Did I say we

1 were off the record?

2 MS. LUCKHARDT: Yes.

3 HEARING OFFICER CELLI: I'm sorry, we're
4 on the record. We never should have gone off the
5 record. I'm sorry if I said that.

6 Ms. Oviatt, please.

7 MS. OVIATT: Thank you. I'm Lorelei
8 Oviatt; I'm the Acting Planning Director of the
9 Kern County Planning Department.

10 Supervisor Maben, who is the Kern County
11 Board Member for the Second District, was here
12 earlier this morning. He had to leave. He has
13 delegated that authority to me to speak for the
14 Kern County Board of Supervisors.

15 On December 1, 2010, the Kern County
16 Board of Supervisors did review the Beacon Solar
17 project in a public hearing. And did authorize us
18 to represent to your Commission their position on
19 this matter.

20 The first thing I'd like to note is that
21 I have provided a letter to you with our comments.
22 And in that letter I'd like to make sure that you
23 are clear that we have the highest regard for the
24 work that your staff, specifically Eric Solorio,
25 has done in working with the local agencies,

1 working with my staff, and providing answers and
2 feedback in a very responsive manner. And we'd
3 like to commend you for his work.

4 And, as well, the applicant has been
5 very involved with the planning department in
6 attempting to answer our questions and provide
7 information to the community.

8 We do support this project. We believe
9 that the mitigation for water and other
10 environmental impacts that we brought up earlier
11 in the process have been addressed, with the
12 exception of public services.

13 On January 15th we did provide to Mr.
14 Solorio a letter, along with a backup of
15 information, regarding our opinion that there is a
16 deficiency in the public services analysis.

17 Due to the fact that we have done a
18 comprehensive study of growth for the entire
19 county, and provided that document, the capital
20 improvement facilities plan, that shows what
21 impacts would be on public facilities such as
22 fire, sheriff, libraries, countywide protection,
23 even if we received full taxes for development.

24 And that by 2030 there would be a need for
25 these additional facilities.

1 As you know, under the California
2 Environmental Quality Act, the impact on public
3 services, this is only on facilities, not on
4 staffing. We note that Kern County is a highly
5 industrialized county. We have a lot of
6 experience with industrial projects.

7 We understand they have an internal fire
8 system, which you will be talking about during
9 hazards, and may already have talked about.
10 However, it is insufficient without the backup of
11 the regional response teams, including the hazmat
12 teams, the county coroner, the fire and sheriff
13 investigation, and the 9-1-1 service.

14 We are proposing that this solar-thermal
15 project, which will only be providing, because of
16 the tax relief that they receive from the
17 legislature, \$440,000. Your own final staff
18 assessment indicates that if they could be
19 reassessed they would be able to provide \$4.2
20 million.

21 Our capital improvement facilities plan,
22 which we have provided, shows that even with full
23 taxes, even with the \$4 million, it will not keep
24 up with the necessary facilities.

25 Therefore, the county administration

1 office, directed by the board of supervisors, has
2 asked that I request that your Commission put a
3 condition of certification -- is that ow you say
4 it? Certification, sorry. It's been a long day
5 -- that requires the payment of a public services
6 mitigation fee for the specific categories of
7 countywide public protection, sheriff patrol and
8 investigation and fire protection. Not to exceed
9 \$1,060,439 a year.

10 How we came to those calculations in our
11 backup materials is provided. You will note that
12 the letter you received says \$1.5 million. We
13 have consulted with the county administrative
14 office, who has revised this down to \$1,060,439 a
15 year, the final amount each year to be determined
16 by the Kern County Board of Supervisors at a
17 public hearing, and paid by April 30th of each
18 calendar year. The presentation to the board of
19 supervisors to include a annually adjusted for
20 inflation.

21 The intent of this will be to provide
22 the board of supervisors discretion in regards to
23 the amount of jobs that are being produced by this
24 project. And to look at other revenue sources
25 that may come in that could offset the impacts of

1 these facilities.

2 We want to be fair to this solar-thermal
3 project, which will provide much-needed jobs and
4 contribute to the 33 percent that's necessary for
5 renewable energy.

6 Kern County is the center of renewable
7 energy with our wind, our geothermal and our
8 biodiesel plant, and we certainly are supportive
9 of appropriately sited projects.

10 With that, we would ask that your
11 Commission consider allowing staff to craft the
12 language for this. And we look forward to any
13 questions that you may have. We appreciate very
14 much your coming out to California City so that
15 our local citizens can testify in person.

16 Thank you.

17 HEARING OFFICER CELLI: Thank you, Ms.
18 Oviatt.

19 Is Dawn Martin here?

20 MS. LUCKHARDT: Do you want us to
21 respond or not at this time?

22 HEARING OFFICER CELLI: Well, this is
23 public comment.

24 MS. LUCKHARDT: Fair enough.

25 HEARING OFFICER CELLI: -- informational

1 hearing. Usually in an informational hearing we
2 let the parties sort of respond. I think that if
3 you wanted to have a conversation offline, that
4 could happen. But for our purposes this is an
5 evidentiary hearing and we need to hear people's
6 discussion of the evidence.

7 So, with that, Ms. Martin, please.

8 MS. MARTIN: My name is Dawn Martin, I
9 live in Rancho Seco about three-eighths of a mile
10 north of the plant site.

11 On the visual resources, the KOP-6
12 picture is from where visitors only, I'm not going
13 to climb that mountain and look down on the site.
14 And I don't have a plane to fly over it.

15 So, there's no one that lives up there.
16 So it's only for visitors and hikers. They would
17 only be there to see it one time, and not go back
18 through.

19 Jawbone Station, it's for visitors only
20 also. So both of those pictures do not include
21 me. I live on the ground; I look straight across
22 at this site.

23 I do believe we can live with it, but it
24 would be awfully nice to have a picture from the
25 ground, from where I live, to see what it might

1 look like in the future when it's built.

2 We know light reflection from computers,
3 people working in the room, -- is distraction once
4 in awhile. We know that sitting there watching
5 cars go by, they reflect every once in awhile and
6 it catches your eye. So light reflection is
7 sometimes disturbing.

8 And so in that, I don't know exactly how
9 they would grade it to bring it down to a level
10 where it wouldn't be reflective to me. But that
11 would be interesting to know how that's going to
12 be done.

13 The other thing is is on the soil and
14 water usage. Eight million cubic yards of soil to
15 be moved in five months, that's going to be a lot
16 of trucks, a lot of equipment moved in.

17 And about 8100 acrefeet of water to be
18 used in five months, that's a lot of water, very
19 fast. This is a lot of use of groundwater that's
20 disturbing to me because I'm the president of the
21 water association out there, and we don't use that
22 much water in a long time. We only use maybe 4 or
23 5 acrefeet of water a year.

24 And is this a five-year project? I'm
25 told the wastewater is going to be used. And in

1 that time how much water will be used a year to
2 get the plant running and over the 8000 acrefeet
3 of water?

4 HEARING OFFICER CELLI: Mr. Solorio, did
5 you want to speak to that?

6 MR. SOLORIO: All right, I can address
7 that. Staff has recommended two alternatives on
8 the table for the applicant to select from. That
9 is either connected to the California City
10 tertiary plant or the Rosamond plant.

11 If they connect to the Rosamond plant
12 that water would be available for the volume, any
13 construction. If they decide to go with the Cal
14 City option, that will take five years to phase
15 in. So they will use groundwater and phase out
16 approximately 20 percent of the groundwater a year
17 for five years.

18 MS. MARTIN: Okay. So the 153 acrefeet
19 of water per year, will that just be for what kind
20 of usage? Groundwater.

21 MR. SOLORIO: Again, if they went to
22 Rosamond then the 153 would be for operations, the
23 plant, for the steam turbine generator and the
24 majority for mirror washing.

25 And likewise of Cal City. But the 150

1 wouldn't be there until the end of the five years.

2 MS. MARTIN: Okay, so all the
3 groundwater usage will end in five years?

4 MR. SOLORIO: Correct.

5 MS. MARTIN: Okay. I want to thank you
6 all for being here and answering our questions
7 and helping us out. And we would love to see this
8 project go forward.

9 HEARING OFFICER CELLI: And thank you
10 for your comments.

11 MR. SOLORIO: If I may, I just want to
12 clarify something. When you asked if all the
13 groundwater usage would end now, the 153 -- excuse
14 me, Ms. Martin.

15 MS. MARTIN: Yes.

16 MR. SOLORIO: Ms. Martin, I'm sorry, I
17 wanted to clarify my answer to you. When you
18 asked when all this groundwater use would cease.
19 If they connected to Cal City, the phase out would
20 cease, but they would continue to use 153 acrefeet
21 a year going forward for plant operations.

22 MS. MARTIN: Okay, thank you.

23 HEARING OFFICER CELLI: Thank you for
24 clarifying that. Corky Corcoran, come down.

25 MR. CORCORAN: Thank you. I would first

1 like to thank the Commission for having this
2 hearing out in the sticks instead of at the state
3 capital. Let's the people know that our public
4 servants are looking out for us.

5 I'm here as a resident of Cal City. And
6 I am highly favorable for this project, for the
7 jobs it will create, and the clean energy. We all
8 need more renewable energy. And I have had
9 business dealings with FPL and their incarnations
10 at Harper Lake and California City -- I'm sorry,
11 Kramer Junction. And find them to be a highly
12 commendable, environmentally conscious company and
13 I think they are a very good steward of the land.

14 So I am very much in favor for the
15 economy and the fact that the reputation of the
16 people involved.

17 Thank you.

18 HEARING OFFICER CELLI: Thank you for
19 your comments. And thank you for sticking around
20 all day long, because I've seen you here.

21 We have Kim Collins. Mr. Collins,
22 please.

23 MR. COLLINS: My name is Kim Collins; I
24 live here in California City. I gave a copy of a
25 letter to the man in the back back there. Did he

1 give you guys a copy of this letter?

2 MR. DAVIS: I've got them right here.

3 I'll give them your copy.

4 HEARING OFFICER CELLI: Thank you.

5 Because you gave it to the Public Adviser, we'll
6 get a copy.

7 MR. COLLINS: Okay. It's my letter that
8 I wrote and I emailed it and mailed it on
9 Wednesday of this last week. It's a one-page
10 letter. I'm requesting that it goes in the
11 official record. It's just a little one-page
12 letter in support of the project.

13 And I wanted to cover a few issues,
14 actually questions and maybe you can answer them,
15 or the energy people can answer them.

16 I'm curious, how much has Nextera Energy
17 spent to date on trying to get this project up and
18 running? Is that a substantial amount? Would
19 they care to comment?

20 HEARING OFFICER CELLI: What was your
21 question, sir?

22 MR. COLLINS: I was curious, to date how
23 much Nextera Energy has spent to get this project
24 to the point where it is today.

25 HEARING OFFICER CELLI: I'm sure they've

1 spent a lot. But they actually don't have to give
2 us that information. That's their private
3 business.

4 MR. BUSA: As one example, part of the
5 public record is we did purchase the property, and
6 that was in excess of \$10 million-plus, just for
7 the purchasing of the property, so --

8 MR. COLLINS: The point I'm getting to
9 is the lady sitting next to me over here was sure,
10 and I see that she has a big stack of papers on
11 this table that she represented to the Energy
12 Commission, to the proponents and everybody else.

13 And to me, personally, I think what
14 they're doing is kind of a tragedy, and all the
15 paperwork that they're compiling and submitting to
16 all you guys, I think it's a travesty that this
17 organization is being allowed to submit all this
18 paperwork and wasting a lot of important time and
19 effort, and dragging this program on. And
20 stalling out the completion of your findings and
21 issuance of a permit to operate the plant.

22 I think this is a political travesty,
23 myself. That's the way I look at it. What
24 they're doing, I think it's really bad. The
25 unions, environmentalists are allowed by

1 California State law to submit so many papers.

2 She has piles of papers over there.

3 And you guys there, you guys there, and
4 you there have to answer and submit and do
5 research and answer all these different questions
6 and documents. And you have to provide people to
7 testify. I think all it does is just drag on this
8 whole process.

9 And, to me, I think this is one reason
10 why some people really don't want to do business
11 in the State of California. Because travesties
12 like this are allowed to happen in our state.

13 Me, personally, I think it's a travesty
14 on how much paperwork they're allowed by law to
15 submit, all their different requirements that
16 they're putting on the Commission, you know, and
17 on the proponent. And requesting this and
18 requesting that. I think it's a travesty.

19 And I had a question for Kenneth. I
20 would like to say thank you for what happened,
21 which you not allowing their last-minute, all
22 their last-minute filings not to be a part of the
23 record. Because I think it was a travesty what
24 they did, try to file last-minute paperwork. Just
25 another pile of, you said three inches tall. More

1 paperwork for everybody to look at and compile and
2 try to disseminate. I think that was a travesty
3 and I'm glad that you didn't allow all the stuff
4 to be submitted into the record. I wanted to
5 thank you personally for that.

6 And another question, too, sir. Do you
7 know a date when they might be actually issued a
8 permit to start construction?

9 HEARING OFFICER CELLI: What I can tell
10 you is this. Right now we're in the middle of
11 evidentiary hearings. If all goes well we'll be
12 done tonight.

13 It takes approximately 60 days. Because
14 what's going to happen is there's a transcript
15 that's going to be prepared. Based on this
16 transcript, the parties are going to create
17 briefs, which are essentially argument position
18 papers on how they feel about this or that, the
19 issues raised.

20 After I get the briefs and when I take
21 in all of the evidence, and there's a lot of
22 evidence to take in, and read anything new, it
23 takes approximately 60 days to write the decision.

24 The decision is the Presiding Member's
25 Proposed Decision. And Chairman Douglas, who's

1 the Chairman of the Commission, happens also to be
2 the Presiding Member of this Committee. Also,
3 he's not here today, but Commissioner Byron will
4 be the Associate Member.

5 Basically the opinion is presented and
6 written by the Committee to the full Commission at
7 a business meeting. And that usually lasts --
8 that occurs probably within let's say 30 days of
9 the date of the issuance of what we call a PMPD,
10 the Presiding Member's Proposed Decision.

11 At that hearing if the proposed decision
12 is adopted, then that's the date of the license.
13 So we're looking at about 90 days out, maybe 100
14 days.

15 I just want to mention something else,
16 too, just because it can't go without mention.
17 The way our process is set up is we want to have
18 maximum input from the public and interested
19 parties, so that when the day comes if this
20 project is licensed, that what we have is the best
21 possible project.

22 And the way that we insure that is we
23 have a Public Adviser, and we have a system that's
24 designed essentially to beat the bushes to call
25 out anybody we can who's interested in this

1 project, so that those people will make comment.
2 And so that when the final decision is made, every
3 point of view has been allowed, accepted,
4 considered, addressed.

5 And so I want to say that CURE provides
6 an important dimension to the work that we do
7 here. Because what they're doing is basically
8 keeping the applicant and the staff honest.
9 They're questioning; they look at the evidence.

10 You know, I have to tell you, Mr.
11 Collins, if their investigation turned up
12 something high toxic out there, that could have
13 been poisonous to your community then you would
14 have been very grateful to have those people here,
15 as any of us would.

16 And so I just want to make the point
17 that for our society to work, it takes both sides.
18 And we want to hear from all points of view. And,
19 yes, it may seem inefficient and slow, but in the
20 end we can say, well, we heard from everybody.

21 And so that's what we're trying to do.
22 And from that we will have a better project -- a
23 better product and a better project. And so it
24 may seem like a travesty; you're in a hurry to
25 hurry up and get a project built.

1 Sometimes you need to stop and think
2 that, yes, once that project's up, no one's going
3 to rip it out for a long time. And if you're
4 going to put it in there, you better make sure
5 that we're not doing something wrong to some
6 species or something, whatever.

7 So we want to make sure that there are
8 no impacts; all the impacts are mitigated. And
9 that's why we do it. And that's why they're here.
10 And so actually they're a service.

11 MR. COLLINS: Another question. When yo
12 issue the final permit is Nextera prepared to --
13 how soon after you get the final okay, how soon
14 will they actually be moving some of that dirt?

15 HEARING OFFICER CELLI: Have no idea.

16 MR. COLLINS: Would they care to
17 comment?

18 MR. BUSA: I just would comment that
19 there are a number of months of prework before
20 dirt gets moved. There are a lot of conditions.
21 One comes to mind, like cultural studies that need
22 to be done for many months actually prior to us
23 moving dirt. So, you know, it wouldn't be before
24 the end of the year if we stuck to Mr. Celli's
25 schedule, maybe even a little bit longer.

1 MR. COLLINS: Okay, so possibly you
2 could start to move dirt early part of next year,
3 possibly?

4 MR. BUSA: At the end of this year or
5 early next year, yeah, that would be the earliest.

6 MR. COLLINS: Okay. In closing I'd just
7 like to thank you all for coming here from
8 Sacramento so you can hear what we, as the local
9 community, have to say. And thanks for Nextera
10 coming all the way from Florida to be here and to
11 take public comments and meet with all of the
12 local people, and meet with the Sheriff sitting
13 here, and everybody.

14 And hopefully by next year they can be
15 digging up dirt and getting the project up and
16 running. Thank you.

17 HEARING OFFICER CELLI: Thank you for
18 your comments. Appreciate your participation.

19 I have Wally Melendez, did Wally come
20 back? There he is.

21 MR. MELENDEZ: Good evening, Mr. Celli.
22 My name is Wally Melendez. I live in California
23 City.

24 So, Mr. Celli, we're looking at maybe, I
25 didn't hear it too well, but maybe around the

1 middle of this year or later in the year we might
2 start this project?

3 HEARING OFFICER CELLI: Did you give an
4 estimate to the start time?

5 MR. BUSA: If you gave me a 90- to 100-
6 day permit time, towards the end of the year or
7 into early next year by the time we actually are
8 moving dirt, with many months of prework.

9 MR. MELENDEZ: Okay. And from an
10 article that was in The Valley Press, well, not
11 The Valley Press, but I heard it here in this
12 meeting, approximately 1000 construction workers
13 are going to be working on and off on that project
14 at different times. And it's supposed to last for
15 about five years, the construction?

16 MR. BUSA: The peak construction force,
17 you're correct, is about 1000 workers. And it's
18 actually a little over two years, two years to 30
19 months of actual construction,

20 MR. MELENDEZ: Okay, about two and a
21 half years?

22 MR. BUSA: Yes.

23 MR. MELENDEZ: Well, I wish you luck
24 with all your permits, applications, licenses and
25 so on. I'm a master electrician and I ran for

1 mayor two years ago. And I'm running for mayor
2 this year, again.

3 And I'm not running to run, I intend to
4 win. So I hope that I'll be helpful with your
5 project. And if you live around here, maybe
6 you'll vote for me.

7 (Laughter.)

8 MR. MELENDEZ: So, Mr. Celli, what is
9 the name of the secretary of the California --
10 what is it, Commission?

11 HEARING OFFICER CELLI: We're actually
12 the --

13 MR. MELENDEZ: Energy Commission.

14 HEARING OFFICER CELLI: The California
15 Energy Commission is a commission, it's not an
16 agency where we're -- it's not a --

17 MR. MELENDEZ: It's not a department?

18 HEARING OFFICER CELLI: Not a
19 department.

20 MR. MELENDEZ: Not a department, it's a
21 commission. So it has a Chairman.

22 HEARING OFFICER CELLI: That's right.

23 MR. MELENDEZ: What is the name of the
24 Chairman?

25 HEARING OFFICER CELLI: Karen Douglas.

1 PRESIDING MEMBER DOUGLAS: I'm the
2 Chair.

3 MR. MELENDEZ: Oh, Karen. Very nice to
4 meet you.

5 (Laughter.)

6 MR. MELENDEZ: Very nice to meet you.

7 PRESIDING MEMBER DOUGLAS: It's a
8 pleasure to meet you, as well.

9 MR. MELENDEZ: Thank you, Karen. Okay,
10 I think that exhausted my questions, Mr. Celli.
11 Again, good luck.

12 And, oh, one thing more. I don't know
13 if you've been around here at night. The
14 streetlights are almost negligent in the city.
15 How can we get electricity from your plant to
16 light up lights, streetlights, in this town?

17 HEARING OFFICER CELLI: Well, it has to
18 be built first, for starters.

19 (Laughter.)

20 MR. MELENDEZ: And then maybe we might
21 be able to siphon some off, is that what you're
22 saying?

23 (Laughter.)

24 HEARING OFFICER CELLI: I don't know,
25 but I think you might want to talk to FPL,

1 Nextera.

2 MR. MELENDEZ: FPL stands for what?

3 HEARING OFFICER CELLI: I meant Nextera,
4 formerly known as Florida Power and Light.

5 MR. MELENDEZ: Okay.

6 HEARING OFFICER CELLI: I want to thank
7 you for your comments and wish you the best of
8 luck in your run for mayor.

9 MR. MELENDEZ: Thank you, Mr. Celli.

10 HEARING OFFICER CELLI: Thank you. And
11 just for the record, I pronounce my name Celli,
12 it's Italian.

13 MR. MELENDEZ: Okay.

14 HEARING OFFICER CELLI: Like cellos.

15 MR. MELENDEZ: That's a good thing. I
16 should have known.

17 HEARING OFFICER CELLI: I had Eleanor
18 Owens. Did Eleanor Owens come back? Great. I
19 thought we lost you.

20 MS. OWENS: Not at all. My name's
21 Eleanor Owens and I do not live here; I live in
22 neighboring North Edwards. And I'm the proud
23 owner of a home solar electric system,
24 photovoltaic, started by my late husband. And do
25 know how valuable it can be.

1 But my question, I just have a three-
2 part question. When this project is up and
3 running, who will own it, operate it and maintain
4 it?

5 HEARING OFFICER CELLI: That would be --
6 well, Nextera is the applicant right now. And
7 assuming they don't sell it to someone else, then
8 it would be Nextera's project.

9 MS. OWENS: For all parts?

10 HEARING OFFICER CELLI: If they give it
11 away to someone else --

12 MR. BUSA: And just to mention, since
13 you are from North Edwards, you may be familiar we
14 have a project over at Kramer Junction right now.

15 MS. OWENS: I do know that.

16 MR. BUSA: We are in partnership over
17 there, but we are the operator and partial owner
18 of that site called SEGS, over at 395 and 58.

19 MS. OWENS: I do know that. Thank you
20 very much.

21 HEARING OFFICER CELLI: Thank you very
22 much for your comments. Is Jack Martin still
23 here?

24 MR. SPEAKER: No, he went home.

25 HEARING OFFICER CELLI: Michael, is it

1 Seward?

2 MR. SELLARD: That's close.

3 HEARING OFFICER CELLI: Semard?

4 MR. SELLARD: Sellard.

5 HEARING OFFICER CELLI: S - e --

6 MR. SELLARD: -l-l-a-r-d.

7 HEARING OFFICER CELLI: -- l-l-a-r-d.

8 Sorry for the mispronunciation.

9 MR. SELLARD: That's okay. A lot of
10 people do. Thank you very much for allowing us to
11 speak as a community. You guys have driven a long
12 ways and it's been a long day. I was here for
13 most of the meeting this morning.

14 My name is Michael Sellard. I'm a
15 resident of California City for the last five
16 years now. And I've enjoyed the desert and the
17 view. And I'm familiar with this ranch that this
18 proposed project is being proposed to be built at.

19 I followed this progress, very slow
20 progress, and labor intensive to get all this
21 done. I think these guys have done an admirable
22 job. And I've listened to the water people speak
23 and so forth. And I think for two different, not
24 exactly opposing views, I think they've worked
25 together cooperatively. And I'm delighted to say

1 that.

2 But if I don't speak my mind tonight,
3 I'm not going to speak very good. And so here it
4 is. So be patient with me today, I was patient
5 with you guys this morning, listening to all this
6 chatter going on.

7 I wanted to write down a couple things
8 and share. What I heard today was rather
9 disturbing to me. It really was. It almost made
10 me cry in a way, as a Californian, as a resident
11 of this community.

12 CURE seemed to be groping about in the
13 darkness trying to come up with questions and
14 gasping for air almost of anything to do, it
15 seemed like they were wasting people's time. That
16 was my feeling I got. Again, these are my personal
17 feelings.

18 I was wondering why they were putting so
19 much effort into being negative energy towards
20 this project. And so I kind of did a little
21 research, And I don't believe a lot of what I see
22 on the internet, but it gave me some balance.

23 I saw what their website stated as, you
24 know, their message to the world. It sounded
25 really good. Sounds really neat, you know.

1 Together the environmental labor organizations can
2 improve California's economy. That sounds good.

3 And the environment, well, that's really
4 good. Making sure that conventional renewable
5 power plants would be the best practices to
6 protect our clean air, that's good, land, water,
7 et cetera. Minimize the environmental impact to
8 new plants, well, okay.

9 To me it was just kind of -- it didn't
10 seem to ring true with what I heard today. And
11 that bothered me. A lot of things bother me about
12 politics. But, anyhow.

13 It just seems like it's -- I got the
14 feeling it's manipulation and greed involved here,
15 as the root or the genesis of who they are. And
16 that bothers me very very much.

17 I look at Beacon, you know, and Florida
18 Power and Light, and I don't -- they don't know
19 who I am hardly, you know, just a resident here.
20 And I see that they try and work with people.
21 They try and communicate. And I saw some good
22 things happen. I didn't go to Sacramento because
23 I couldn't go up there.

24 But it seems like an intervenor, I don't
25 know why they're an intervenor, this group here.

1 It doesn't seem right to me. I know it's
2 American, it's freedom and all that stuff, and
3 that's good, because things are wasting away, it
4 seems like.

5 You know, if a project labor agreement
6 was signed here, they would be shouting from the
7 rooftops, how wonderful FPL is, how wonderful
8 Nextera Energy is, and how they're good for the
9 environment. They'd be just tickled pink.

10 I know that they're involved in a lot of
11 places and a lot of energy projects here in
12 California. And there was a guy named Richard
13 Henry Lee, and he made a statement. This was in
14 The Sacramento Bee, It was just kind of
15 interesting.

16 This is a quote, this is in February
17 2008. "For several years a group called
18 California Unions for Reliable Energy has used
19 CEQA to slow down or block power plants, including
20 a geothermal plant in Imperial County."

21 "CURE is supported by various
22 construction unions, It has a history of fighting
23 new projects in California unless the applicant
24 agrees to use union labor on the project."

25 Okay, what's new? "Labor unions are an

1 even larger abuser of CEQA," he stated. "In
2 recent years labor groups have used environmental
3 lawsuits or the threat of such lawsuits to stop or
4 slow down power plant construction, hospital
5 expansions and housing developments."

6 "The union lawyers always seem to
7 disappear once a developer has signed a agreement
8 to hire only union labor."

9 "When BrightSourceEnergy went for their
10 permit and they pledged to hire union contractors
11 they quickly moved into their project in the
12 desert. And very quickly they were underway,
13 because CURE made no objection whatsoever to the
14 project."

15 This is a community of hard workers here
16 in Cantil and California City. There's a lot of
17 unemployment here. And it concerns me -- I used
18 to be a union worker at one time, a long time ago
19 before I changed professions, so I have a little
20 bit of understanding. And I'm pro-union, in a
21 way, and I'm not in other ways. They were a good
22 thing at one time. I won't get into my political
23 viewpoint on that.

24 But I think they've really overstepped
25 their bounds here. The construction that's going

1 to happen there, which is, two and a half years I
2 think was stated by this gentleman here, and about
3 1000 workers. Except for the power block section,
4 which takes highly skilled plumbers and fitters,
5 welders, electricians, it's really a nonskilled
6 job, or semi-skilled, at best.

7 And this community can really benefit
8 from this power plant. It's needed in this
9 community. It's coming, unfortunately a little --
10 it would have been nice if it had been a year ago,
11 but that's the way things happen. We all know it
12 takes time. I think most of the residents didn't
13 think it would take this much time.

14 But, anyhow, this community of hard
15 workers can build that portion of the plant which
16 takes assembly. And we can also build the
17 waterline, the recycled water from Rosamond and
18 California City to the Beacon site in Cantil.

19 If CURE gets its way, through
20 manipulation, in my personal opinion, coercion,
21 all the workforce will be out of town. There will
22 be no jobs that will come to this community.
23 Because none of the workers here, with possibly
24 exceptions, belong to any of the CURE union shops.
25 Most of those are in Los Angeles, I believe, and

1 also up and down California, but in Bakersfield.

2 FPL will even have to pay per diem for each
3 one of those workers, too.

4 I'm almost done, sir. Now, sir, thank
5 you for not allowing CURE to enter in those three
6 inches of papers into the record. I commend you
7 for that. Thank you.

8 I've worked with many many attorneys in
9 my business career, and I've always seen the trick
10 of, in this case it was Thursday night, but
11 usually it's Friday night at 4:59 an email comes
12 in or a fax with a whole bunch of burdens now
13 placed on the other camp. And I think it was very
14 unfair, because sometimes that brings confusion.

15 Not in this case, you have a very
16 experienced developer here. They know what
17 they're doing.

18 CURE is doing the same thing in other
19 large energy projects like the ones in Roseville,
20 Victorville, Romoland and in Sutter.

21 It works like this. If you agree early
22 on with them, then your project will be built
23 quicker and cheaper. And now all of a sudden
24 they're your best buddies.

25 We are supporting, I speak of the

1 community -- actually I speak for myself, and some
2 people may not agree with me, but I think as a
3 community we're supportive of this project. It's
4 needed. It's in the Governor's mandate. It's in
5 the best interests of human beings. It saves on
6 carbon footprint. It's a good thing.

7 They're responsible. They've already
8 got a whole bunch of plants around. I've seen
9 some of those plants. I've actually been over at
10 one a long time ago. And they're very
11 professionally run and these guys are doing the
12 right thing.

13 Now, FPL and Nextera Energy, from my
14 viewpoint, is a proven major environmental
15 friendly energy producer. And will treat the land
16 of Cantil with respect and very well. They will
17 do that. And I believe without anybody even
18 overseeing them, I think they would do that.

19 They'll actually improve the land and
20 the local environment from the existing abandoned
21 condition it's in today. You don't hear anybody
22 objecting to this plant, and people around here
23 speak their mind.

24 The Beacon project will bring good-
25 paying jobs in this community, but we need the

1 jobs. The Beacon plant will not come here to
2 simply take profits from the land and leave. They
3 are here to stay. They are one of the major
4 energy producers in the United States. And
5 they'll continue to be that way because of their
6 integrity and the way they do things. I've
7 watched them closely.

8 They are committed to energy companies
9 that was a good reputation and is committed to the
10 community and to solar project, as I said earlier.
11 They are a proven producer and they will be
12 responsible, again, towards the land.

13 They have proven themselves over and
14 over again. And their willingness to communicate
15 with other people that do not agree with them
16 possibly.

17 I am not for CURE for the following
18 reasons: They work on, in my opinion they work on
19 principles based on deception and are
20 manipulative. I saw it over here clearly today.

21 In this case they will not probably
22 provide any local jobs to the community. CURE
23 will control its job effort from cradle to grave
24 on this project. And there will be no local jobs
25 after this plant is built, unless, of course,

1 someone again belongs to that union,

2 I encourage the CEC and yourself, sir,
3 to continue to work with Nextera Energy and get
4 this permit in place. We need it as a people
5 group. As human beings, we need this. And change
6 is not easy, and these guys are making change. We
7 need to make this happen.

8 I would encourage Nextera Energy not to
9 bow down or cower to CURE, as it will hurt this
10 community and this project. I encourage Nextera
11 Energy not to bow down or cower to CURE, as it
12 will hurt California in future projects. Now,
13 again, this is my personal opinion, nobody has to
14 agree with me, okay. I got this freedom to speak
15 and it's wonderful until it's taken away. Which
16 we're seeing daily, this is taken away, and it's
17 sad.

18 I would appreciate it if CEC would not
19 allow CURE to be an intervenor any more, because I
20 don't think that the foundation and the root and
21 the motivation is correct. That's my opinion.

22 HEARING OFFICER CELLI: Well, thank you
23 very much.

24 MR. SELLARD: I've got one more little
25 tiny thing.

1 HEARING OFFICER CELLI: Oh, I'm sorry.

2 MR. SELLARD: Thank you. What CURE does
3 is near blackmail in my opinion. What the people
4 in the industry call it is greenmail. It's
5 blackmail in disguise. And I think it's very
6 wrong.

7 Once again, let's all stand up and be
8 counted for doing things in the correct way, with
9 righteousness, making good decisions for our
10 environment and for our community.

11 Thank you very much.

12 HEARING OFFICER CELLI: Thank you very
13 much. I just am going to say that our licensing
14 process pretty much is designed to see whether
15 this proposed power plant is in compliance with
16 all the laws of the State of California, all of
17 the federal laws, all of the local laws. We make
18 sure that it complies with the California
19 Environmental Quality Act.

20 And if it jumps through all of these
21 legal hurdles, --

22 MR. SELLARD: Yes.

23 HEARING OFFICER CELLI: -- then they get
24 their license.

25 MR. SELLARD: That's good.

1 HEARING OFFICER CELLI: Who they hire is
2 their business decision. The California Energy
3 Commission does not involve itself in the running
4 of the business --

5 MR. SELLARD: I understand that.

6 HEARING OFFICER CELLI: -- we don't know
7 how to do that.

8 MR. SELLARD: I understand that. I
9 appreciate you guys being here very very much.
10 You guys have put in a long day. I thank you for
11 allowing me to speak my mind, so I'll be able to
12 sleep good tonight.

13 Thank you.

14 (Laughter.)

15 HEARING OFFICER CELLI: Thank you very
16 much. And we have more to go. So, it's now -- I
17 have no other blue cards for public comment. So
18 if there's anyone else who's here, a member of the
19 public who wants to make a public comment, please
20 do.

21 Then I'm looking on the website and we
22 have nobody on the phone, so. You know, folks,
23 the reason we come to these towns is so that you
24 shouldn't have to call in. We're here, so you can
25 come in in person and make a public comment.

1 And so we are very grateful for
2 everyone's public comment. We will consider the
3 public comment section closed for the evening,
4 then. It's now 7:15 and we've heard from
5 everyone, isn't that correct, Jim Davis?

6 MR. DAVIS: Yes.

7 HEARING OFFICER CELLI: That's correct.
8 So I'm going to take a quick break, and can we
9 start at 7:15. And we will start up with
10 hazardous materials -- I mean, well, I've got
11 7:13.

12 (Laughter.)

13 HEARING OFFICER CELLI: We can take a
14 quick break.

15 (Laughter.)

16 HEARING OFFICER CELLI: So we'll start,
17 say, 7:18, how's that. We're going to take five
18 minutes.

19 (Brief recess.)

20 HEARING OFFICER CELLI: 7:23 and
21 counting. I want to take a little inventory of
22 where we are, because by my calculations I've not
23 taken in evidence on alternatives. We did take in
24 all your evidence on bio. We have taken in all
25 the evidence on cultural. We're about to deal

1 with soil and water -- we took all of the evidence
2 on soil and water.

3 We're about to deal with hazardous
4 materials and waste management now. We have not
5 taken in project description because, Ms
6 Gulesserian, you wanted to raise something about
7 that, but I got the sense from talking to you that
8 you weren't going to, you changed your mind, and
9 maybe we can just take in project description?
10 You can clear me up on that one.

11 MS. GULESSERIAN: Right, we don't have
12 any questions on project description anymore.

13 HEARING OFFICER CELLI: Okay, and then
14 transmission system engineering is finished and
15 visual is finished.

16 So what I think we should do right now
17 is take in alternatives and project description.
18 And if I'm right about this, then the only thing
19 outstanding will be hazardous materials and waste.
20 Right?

21 MS. LUCKHARDT: Correct.

22 HEARING OFFICER CELLI: We haven't taken
23 -- okay.

24 MS. LUCKHARDT: Project description,
25 alternatives, hazardous materials and waste.

1 That's my list.

2 HEARING OFFICER CELLI: And hazardous
3 materials, or alternatives, we received
4 everybody's evidence except applicant's, I
5 believe. I don't think I took that in. Or did I?

6 MS. LUCKHARDT: No, you have not
7 received our testimony on alternatives. Would you
8 like me to move that?

9 HEARING OFFICER CELLI: Please. Motion
10 as to alternatives by the applicant.

11 MS. LUCKHARDT: Okay. Applicant moves
12 exhibit 4 in the area of alternatives. Exhibit 4,
13 AFC section 4; exhibit 43, AFC appendix K-1;
14 exhibit 89, an email from Kenny Stein to Eric
15 Solorio dated 11/24/08.

16 Exhibit 100, the dry cooling evaluation;
17 exhibit 121, the preliminary PSA comments; exhibit
18 127, the PSA comments on alternatives; exhibit
19 153, the comments on the CEC groundwater sampling
20 program.

21 Exhibit 166, the project design
22 refinements section 3.1; exhibit 167, the project
23 design refinements section 3.1.1; exhibit 168, the
24 project design refinements section 3.1.2; exhibit
25 169, the project design refinements section 3.2;

1 exhibit 184, the project design refinements
2 section 4.3.1.

3 Exhibit 185, the project design
4 refinements section 4.3.5; exhibit 186, the
5 project design refinements section 4.3.6; exhibit
6 number 187, the project design refinements section
7 4.3.7; exhibit 189, the project design refinements
8 figure 2; exhibit 193, the project design
9 refinements figure 7.

10 Exhibit 221 is an email to the Energy
11 Commission regarding the results of offsite well
12 sampling, dated 8/11/09; exhibit 222 is an email
13 to the Energy Commission with resubmittal of
14 revised metals results from offsite sampling dated
15 8/18/09.

16 Exhibit 224 is the RCR well data;
17 exhibit 229 is the CEC well canvas; exhibit 230 is
18 the CEC well canvas photos; exhibit 245 is the
19 declaration of Dan Sampson on alternatives;
20 exhibit 258 is the declaration of Gary Pratt on
21 alternatives.

22 Exhibit 265 is the declaration of Janine
23 Forrest on alternatives; exhibit 271 is the
24 declaration of Jared Foster on alternatives;
25 exhibit 287 is the declaration of Kenneth Stein on

1 alternatives.

2 Exhibit 297 is the first declaration for
3 Mike Flack on alternatives; exhibit 298 is the
4 second declaration from Mike Flack on
5 alternatives; exhibit 308 is the declaration of
6 Sara Head on alternatives; exhibit 314 the
7 declaration of Scott Busa on alternatives.
8 There's a second one as well -- Scott Busa. And
9 then exhibit 317 is the declaration of Scott Stern
10 on alternatives.

11 HEARING OFFICER CELLI: Thank you.
12 CURE, any objection to the receipt of any of that
13 evidence?

14 MS. GULESSERIAN: No objections.

15 HEARING OFFICER CELLI: Staff, any
16 objections?

17 MR. BABULA: No objections.

18 HEARING OFFICER CELLI: Thank you.
19 Exhibits marked for identification as exhibits 4,
20 43, 89, 100, 121, 127, 153, 166, 167, 168, 169,
21 184, 185, 186, 187, 189, 193 and 221, 222, 224,
22 229, 230, 245, 258, 265, 271, 287, 297, 298, 308,
23 314 and 317 are now received into evidence.

24 And lastly we have project description.

25 MS. LUCKHARDT: Okay, at this point

1 applicant moves our exhibits on project
2 description, beginning with exhibit 2, AFC section
3 2, exhibit 3, AFC section 3; exhibit 5, AFC
4 section 5.1; exhibit 23, AFC appendix A; exhibit
5 45, AFC appendix K-3; exhibit 103 -- no, we're not
6 moving exhibit 103, I apologize for that.

7 Exhibit 126, the PSA comments; exhibit
8 246, the declaration of Duane McCloud on project
9 description; exhibit 280, the declaration of
10 Kenneth Stein on project description. And exhibit
11 310, which is the declaration of Scott Busa on
12 project description.

13 HEARING OFFICER CELLI: Any objection,
14 CURE?

15 MS. GULESSERIAN: No objection.

16 HEARING OFFICER CELLI: Staff?

17 MR. BABULA: No objection.

18 HEARING OFFICER CELLI: Thank you. And
19 exhibits marked as 2, 3, 5, 23, 45, 126, 246, 280
20 and 310 are received into evidence. Number 103
21 was withdrawn.

22 MS. LUCKHARDT: Correct.

23 HEARING OFFICER CELLI: With that we are
24 moving into the area of -- I guess we'll do
25 hazardous materials first, or waste?

1 MR. BABULA: Kind of had it as a panel
2 because most of the comments dealt with HTF, and
3 that kind of crossed both disciplines. Either it
4 was leaking or was already in the ground and what
5 are you doing with it.

6 And, again, we -- resolution with what
7 the applicant says would be CURE's burden.

8 HEARING OFFICER CELLI: So you have
9 another witness, I see, Ms. Gulesserian.

10 MS. GULESSERIAN: Yes, we do.

11 HEARING OFFICER CELLI: So I'd ask that
12 he please rise and be sworn.

13 Whereupon,

14 MATTHEW HAGEMANN
15 was called as a witness herein, and after first
16 having been duly sworn, was examined and testified
17 as follows:

18 HEARING OFFICER CELLI: Please state and
19 spell your name.

20 MR. HAGEMANN: Matthew Hagemann,
21 H-a-g-e-m-a-n-n.

22 DIRECT EXAMINATION

23 BY MS. GULESSERIAN:

24 Q Whose testimony are you sponsoring
25 today?

1 A My testimony.

2 Q Do you have any changes to your sworn
3 testimony?

4 A No.

5 Q Are the opinions in your testimony based
6 on your professional experience?

7 A Yes.

8 MS. GULESSERIAN: I was going to
9 summarize qualifications and experience, or we can
10 stipulate to his expertise to testify on this
11 matter.

12 HEARING OFFICER CELLI: We've received
13 his --

14 MS. GULESSERIAN: R,sum, as --

15 HEARING OFFICER CELLI: -- r,sum,. Is
16 there any objection to this witness testifying as
17 an expert by applicant?

18 MS. LUCKHARDT: No objection.

19 HEARING OFFICER CELLI: Staff?

20 MR. BABULA: No objection.

21 HEARING OFFICER CELLI: Thank you. So
22 stipulated. You don't need to give us any
23 information about all the articles you've written,
24 all of the college you went to, all that. We deem
25 you an expert.

1 BY MS. GULESSERIAN:

2 Q Okay. Can you please summarize your
3 principal findings from your investigation.

4 A Yes. I found that potential spills of
5 heat transfer fluid, thermanol VP1, which I'll
6 just refer to as HTF, would be larger than
7 estimated and it would result in significant
8 unmitigated impacts to people, wildlife and the
9 environment.

10 And would result in potential and likely
11 exposure to toxic levels of contamination that
12 would be harmful to health and to wildlife.
13 Groundwater may also be significantly impacted.

14 I found that potential spills may be
15 much more dangerous than analyzed by CEC Staff,
16 resulting in significant unmitigated impacts
17 because spills at similar facilities operated by
18 the applicant in this proceeding have not been
19 reported in a timely fashion, putting workers,
20 motorists and local residents at potential risk.

21 For example, the I believe it was March
22 2005 9900-gallon spill resulted in a vapor cloud
23 that traveled 3500 feet south to be visible on
24 highway 58, and resulted in the closure of that
25 highway by the California Highway Patrol. This is

1 in my rebuttal testimony dated March 8th. And I
2 made the measurement, myself, off of Google maps.

3 Also, worst case potential spills could
4 result in approximately 500 truck trips for one
5 spill alone, on the order of 30,000 gallons, as
6 seen at the SEGS facility in Kramer Junction.

7 That would have to be transported from
8 the area to hazardous waste landfills resulting in
9 impact on traffic and potential exposure to people
10 and the environment at the place of disposal,
11 which would likely be Kettleman Hills.

12 Spills will generate non- hazardous
13 waste, both free-standing or free-product HTF,
14 which is HTF in a waxy state at ambient
15 temperatures. And that will present some
16 interesting exposure possibilities to workers, to
17 responders to spills.

18 The HTF contaminated soils will be
19 placed in a land treatment unit on the site
20 without any provisions currently for testing. We
21 know that at the SEGS facilities, without testing
22 the material has been placed in the land treatment
23 unit, and has later been found to be in excess of
24 10,000 mg/kgm, the criterion by which DTSC
25 established it to be a hazardous waste in 1995 for

1 the SEGS facility.

2 So we believe that a similar process
3 here where no testing is currently provided in the
4 AFC or the FSA, or any conditions of
5 certification, would result in placement of this
6 waste in the land treatment unit on a low
7 permeability surface, not a nonpermeable surface,
8 which would also include a liner to comply with
9 California and possibly federal hazardous waste
10 regulations.

11 Spills will generate free-standing
12 liquid hazardous waste, and no provisions are
13 currently made in any of the documentation I've
14 reviewed to handle these liquids at the Beacon
15 Plant.

16 Q Okay, in layperson terms what does this
17 mean?

18 A Well, I've had to put a story together
19 on the basis of what I've seen at the Kramer
20 Junction facility. And what I've been able to
21 gather there is that the workers who respond to
22 spills address the spills on a visual basis.

23 They go in and they can obviously see
24 the free-standing HTF is piled up on the ground
25 surface. So that is vacuumed up into a vacuum

1 truck and taken to a recycling facility at the
2 SEGS III through VIII, or III through VII, excuse
3 me, at Kramer Junction. So that's one issue, just
4 dealing with the piled up HTF on the ground
5 surface.

6 Then I think the workers visually assess
7 where the spill has extended within the array of
8 the parabolic troughs. And then that soil is
9 excavated and moved to a land treatment unit where
10 it has limited capacity. And some of the material
11 must be excavated and moved offsite without
12 testing.

13 And then a week later or maybe ten days
14 later on the basis, again, this is all in the
15 testimony I provided in November of 2009 as an
16 attachment. You can look through the reports that
17 I obtained from the Regional Water Quality Control
18 Board. These were not in the possession of the
19 California Energy Commission compliance division.

20 But what I found there is that the site
21 is later sampled, is grid sampled, and so then
22 they excavate further to remove material that
23 would be able 10,000 mg/kgm criterion for
24 disposal. So that's one aspect of what it would
25 mean in lay terms.

1 The other thing I found is that the
2 response at the SEGS facility has not been in
3 compliance with CERCLA requirements for
4 notification, emergency notification. And that, I
5 think, is a significant issue because it would
6 hinder a proper emergency response.

7 It could expose the community, the
8 motorists and response personnel to significant
9 public health risks. And could further expose the
10 environment to contamination in hazardous
11 materials as a result.

12 Q Have you reviewed the FSA hazardous
13 materials conditions of certification?

14 A Yes.

15 Q And based on the conclusions you
16 articulated is that your understanding that these
17 conditions address your findings?

18 A No.

19 Q Why not?

20 A Well, the hazardous materials section of
21 the hazardous materials conditions of
22 certification require several things. That they
23 would only use the hazardous materials that would
24 be listed in the AFC; that there would be a
25 hazardous materials business plan that would need

1 to be prepared that would comply with county
2 requirements; to develop a safety management plan;
3 to provide site security for construction and
4 operation. And to provide for hydrogen gas
5 storage cylinders and provide for isolation valves
6 and pipe loops to isolate HTF leaks.

7 Q So why don't those address your findings
8 that you've made?

9 A Well, principally because, again, no
10 provisions for addressing pure phase or liquid or
11 free-standing HTF. And no provisions for testing
12 the material at the point of the spills origin to
13 insure that it's properly handled.

14 That is before you move it to the land
15 treatment unit you need to know if it is above
16 10,000 mg/kgm. You cannot take that and put it
17 into a land treatment unit that has no liner and
18 is low permeable. It needs to be impermeable.

19 And then you also need to know how to
20 handle the massive volumes of the material so that
21 it can be sent to the proper disposal facility.

22 So, none of that was in the AFC or the
23 conditions of certification.

24 Q Have you reviewed the FSA's waste
25 management conditions of certification?

1 A I have.

2 Q Okay. We probably don't need to go over
3 them again, but we can. If asked questions can
4 you explain whether those conditions address the
5 findings that you've made?

6 A No, again free-standing HTF is not
7 addressed. Placement in the land treatment unit
8 without testing is not addressed. Transport of
9 free phase material offsite and disposal is not
10 addressed. Or the provision for recycling in a
11 treatment facility onsite is not addressed,
12 either.

13 I will note that at the SEGS III through
14 VII facilities where there have been 10,000-gallon
15 spills, 30,000-gallon spills, again the 10,000
16 gallon spills in 2005, 30,000-gallon spills in
17 2007, that material was sent to a recycling
18 facility onsite.

19 I'm not sure that recycling facility's
20 in compliance with state, federal, county law, to
21 be honest with you. I don't know if it is,
22 because it could be a waste that's then taken and
23 then treated onsite without proper permits.

24 So I don't know in the FSA for the
25 Beacon plant what they plan to do with the free-

1 standing HTF. That is, do they plan to construct
2 a similar recycling and treatment facility at
3 Beacon. Or do they plan to send it offsite.

4 So those are my principal concerns.

5 Q Okay. Did you examine the rebuttal
6 testimony of staff?

7 A Yes, I did.

8 Q Okay. Do you know what I'm talking
9 about, staff's testimony?

10 A Yes.

11 Q All right, by Geoffrey Lesh, on the need
12 to more tightly specify isolation valve
13 requirements in response to Mr. Celli's question
14 at the prehearing conference, or it was an earlier
15 conference. And it was attached --

16 HEARING OFFICER CELLI: It was a status
17 conference.

18 MS. GULESSERIAN: Thank you.

19 BY MS. GULESSERIAN:

20 Q -- as exhibit 504. Do you have any
21 points regarding staff's supplemental statement?

22 A The issue of how effective isolation
23 valves will be in preventing future leaks -- and
24 leaks are acknowledged by staff and by the
25 applicant, that they will occur -- I don't know.

1 I have no basis to understand how effective those
2 isolation valves will be in preventing leaks.

3 And, in fact, the applicant's rebuttal
4 testimony would indicate that isolation valves are
5 a source of leaks. Although I do see in the
6 record that there are a number of other potential
7 sources of leaks including -- let me just cite, if
8 I could -- because this is not in the record.
9 It's research I did prior to the testimony here
10 today. And that was --

11 MS. LUCKHARDT: Now, it's not in the
12 record? So is it in your rebuttal? Is it in an
13 attachment?

14 MS. GULESSERIAN: Thank you for
15 clarifying.

16 HEARING OFFICER CELLI: Excuse me a
17 moment. Is there an objection?

18 MS. LUCKHARDT: Yeah, I'm objecting if
19 it's new.

20 HEARING OFFICER CELLI: Okay. And is
21 this a basis of an opinion?

22 THE WITNESS: No.

23 HEARING OFFICER CELLI: Okay, --

24 THE WITNESS: It's not opinion, it's
25 fact gleaned from an attachment to my November 12

1 testimony.

2 MS. GULESSERIAN: It is in the record
3 already. It's an attachment to your testimony.
4 It is a summary of attachment from your opening
5 testimony.

6 THE WITNESS: Yes. I think it's
7 attachment 2, which is a long --

8 HEARING OFFICER CELLI: That would be
9 615, -- reports 3 through 7. Is that what we're
10 talking about, 1987 through 2008?

11 MS. GULESSERIAN: That's correct,
12 exhibit 615.

13 BY MS. GULESSERIAN:

14 Q Summary of your findings regarding your
15 review of exhibit 615.

16 HEARING OFFICER CELLI: While he's
17 looking, let's -- how much more do we have on
18 direct?

19 MS. GULESSERIAN: We're almost done.

20 THE WITNESS: It's attachment 2 to my
21 November 12 testimony.

22 So, in that attachment I documented
23 these releases for just two years worth of time
24 from the sources.

25 In February 27, 2007, 1000-gallon spill

1 from a heat collection unit. March 27, 2007, a
2 35-gallon spill from twisting of oil pipe
3 assembly. January 9, 2006, a 75-gallon spill from
4 a packing port on a double ball joint assembly.
5 February 16, 2007, 30,000-gallon spill from a
6 valve stem in 18-inch HTF pump bypass valve.
7 2/15/06, a 400-gallon spill from a heat collector
8 element piping torque tube. And December 30,
9 2006, a 50-gallon spill because a valve was left
10 open by a worker.

11 So I don't see in there isolation valves
12 assisting greatly in reducing the frequency and
13 number of leaks.

14 BY MS. GULESSERIAN:

15 Q Thank you. Did you have an opportunity
16 to review Duane McCloud's rebuttal to your
17 testimony?

18 A Yes.

19 Q And can you summarize briefly any points
20 you have regarding the applicant's rebuttal
21 testimony?

22 A Yes, Mr. McCloud does not address the
23 worst case potential significant impacts from HTF
24 spills. He does not testify to show that valves
25 are the only source of potential HTF spills. And

1 Mr. McCloud's testimony shows that the project
2 involves responding to and handling liquid HTF
3 before it contaminates the soil, that the spills
4 may be so dangerous to safe access to stop the
5 leaks is impossible. And that mitigation is
6 required, but has not yet been identified.

7 Q Did you review the applicant's witness,
8 Michael Flack's rebuttal to your testimony?

9 A Yes.

10 Q Summarize briefly any points you have
11 regarding that aspect of the applicant's rebuttal
12 testimony.

13 A Mr. Flack's testimony shows that neither
14 the project nor staff addressed HTF spills at the
15 point of their origin. And Mr. Flack's testimony
16 is inconsistent with the AFC and the FSA when it
17 states that soils will be staged on impermeable
18 materials.

19 Q Okay. What is your understanding of
20 these issues?

21 A The project only proposes to test HTF
22 contaminated soil after it's moved to the land
23 treatment unit. And that LTU, the land treatment
24 unit, will incorporate a liner -- excuse me, it
25 will not incorporate a liner or leach collection

1 and removal system, but will be constructed with a
2 prepared base consisting of two feet of compacted,
3 low permeability, lime-treated material.

4 Q Does a low permeability surface
5 constitute an impermeable surface for temporary
6 accumulation of hazardous waste?

7 A No.

8 MS. GULESSERIAN: No further questions
9 for this witness.

10 HEARING OFFICER CELLI: Staff, cross?

11 CROSS-EXAMINATION

12 BY MR. BABULA:

13 Q The basis of most of your testimony
14 seems to be what happens at the SEGS facilities,
15 is that the case?

16 A My testimony here tonight?

17 Q Right.

18 A Well, I would say I used the experience
19 there to -- in this facility that is half the size
20 of the Beacon Plant -- well, I should say that the
21 SEGS facility is 600,000 gallons of HTF, well,
22 maybe 700,000 gallons.

23 Beacon proposes to use 1,2 million
24 gallons, or I've also seen in the FSA is 2.4
25 million gallons.

1 So, yes, I use the experience there,
2 similar size at half or a third the size of the
3 Beacon facility.

4 Q And do you know when approximately those
5 facilities were built?

6 A I do know that SEGS started, I think,
7 construction in '86 or operation in '86.

8 Q So, is there -- well, let me put it this
9 way. This project would have to be constructed in
10 2011. Is it true that it's comparable, can you
11 compare with this project being built now and the
12 information known and the technology known today,
13 to a facility built 20 years ago or so?

14 A To the best of my ability, the piping
15 detail is not included this, as Mr. McCloud had
16 testified in his rebuttal testimony. So we don't
17 have the ability to look at design diagrams for
18 the piping system.

19 What I do note is that the Kramer
20 Junction facilities have been retrofitted. For
21 instance, flex tubing, which was used to connect
22 the loops to the troughs, were replaced with what
23 were considered to be more reliable ball joint
24 assemblages.

25 So, and I believe those are the same

1 assemblages that are proposed for use at the
2 Beacon facility.

3 MR. BABULA: Okay. So that would be --
4 would you characterize that as a sort of an
5 evolution process, trying to improve the facility?

6 A I did read at the SEGS facilities that
7 they thought that the flex tubing was particularly
8 prone to leakage.

9 Q Okay.

10 A And the flex tubing is not to be used at
11 Beacon. And by the way, again, if they switch
12 that material or that piping material out, so I
13 don't think that Beacon is fundamentally different
14 than SEGS in that way.

15 Q Okay. You had indicated that you felt
16 that the conditions of certification staff had put
17 forth in the waste section didn't require testing,
18 I think, was one of your statements, of the soil.

19 And so I want to just point out waste-7
20 of the final staff assessment there seems to be in
21 the verification it says, the project shall sample
22 HTF-contaminated soil in accordance with USEPA
23 version of test methods for evaluating solid
24 waste. Samples shall be analyzed in accordance
25 with USEPA method 8015 or other methods reviewed

1 and improved by DTSC and CPM.

2 So there seems to be a testing mechanism
3 in the condition and the verification. And in the
4 condition, itself, it says the -- submit to the
5 CPM and DTSC for approval. The applicant's
6 assessment of whether the HTF containment soil is
7 considered hazardous or nonhazardous.

8 And then it lists -- there's a litany of
9 different things they need to look for -- look
10 through.

11 So, waste-7, that's still not sufficient
12 in your mind to address a potential spill or
13 contaminated soil?

14 A I did not testify that no sampling would
15 be required as a condition of certification. I
16 said that no sampling would be required for the
17 soil at the point of origin of the spill.

18 I think that's a very important point to
19 make because based on the experience at Kramer
20 Junction they've taken soil at the point of spill,
21 placed it in a land treatment unit, tested is at
22 some time later and found it to be above 10,000
23 mg/kgm.

24 And at that point I read nothing in the
25 record that I obtained from San Bernardino County

1 or the Regional Board to show that they then
2 transported material offsite for disposal as it
3 should be, because it was over the DTSC criterion.

4 So, that, I think, is a very important
5 point. But I don't see the specificity in the
6 condition of certification there to require the
7 sampling before placement in an LTU which would
8 not comply with hazardous waste regulations.

9 Q Okay. So, if DTSC and the CPM determine
10 the HTF-contaminated soil is considered hazardous,
11 it's subject -- to be disposed of in accordance
12 with California's Health Code section 25203.

13 So, again, the issue you have is that at
14 the site of the spill that no --

15 A Right.

16 Q -- this is again the verification of the
17 waste-7.

18 A Yeah, I mean we think of this as another
19 site, not a solar plant, which is -- a site that
20 regulators just aren't used to regulate. If we
21 think of this as a refinery where there is above-
22 ground piping. By the way, that's going to be
23 double-walled and it's going to be piping which is
24 very tightly monitored.

25 If you have a spill of gasoline at a

1 refinery you don't go in and just scoop up the
2 gasoline-contaminated soil and then take it to a
3 land treatment unit, which refineries have. They
4 have land treatment units for treatment of the
5 material. But you cannot pick that up and then go
6 take it somewhere else while testing is pending.

7 So in this case I think what has
8 happened is that the regulators have allowed these
9 spills to occur without sampling at the point of
10 origin. And instead, what you would do if they
11 were regulated as in other facilities, is you
12 would go out to that spill site. You would set up
13 a sampling regimen to insure you put an outline
14 around the spill.

15 You would stage the soils properly.
16 That is you would put them properly right into
17 trucks, or you would put it into some roll-up
18 bins. You would composite sample the material at
19 that point to characterize them for disposal at an
20 appropriate facility.

21 So I just don't see that kind of
22 specificity in any of the documents.

23 MR. BABULA: Okay, I have no further
24 questions.

25 HEARING OFFICER CELLI: Thank you. The

1 applicant. Ms. Luckhardt, cross?

2 MS. LUCKHARDT: I just have a few.

3 CROSS-EXAMINATION

4 BY MS. LUCKHARDT:

5 Q You said just a moment ago, and I may
6 not have this as an exact quote, site regulators
7 are not used to regulating. Are you implying in
8 that statement that Beacon would be a site that
9 regulators are not used to regulating?

10 A Well, I'll just look at, you know,
11 comparisons for example. The State of California
12 has 13 refineries. A long history of regulation.
13 They are used to regulating refineries. The State
14 Water Board has familiarity with that type of a
15 facility.

16 In this case, given we have, what, SEGS
17 I and II, we have SEGS III through VII, and we
18 have SEGS VIII and IX. And we have a few other
19 facilities in the state, I would say yes, that
20 regulators are not used to dealing with these
21 kinds of facilities and with the material that is
22 used, particularly at sites where they use heat
23 transfer fluid.

24 Q Are you aware that some of the SEGS
25 facilities are regulated and licensed by the

1 California Energy Commission?

2 A Yes.

3 Q And so you're still saying that the
4 Beacon site is a site regulators are not
5 accustomed to regulating?

6 A Well, when I say that I probably am
7 thinking more the traditional regulatory bodies
8 which would be the Regional Water Quality Control
9 Board.

10 And I say that because the reports are
11 submitted concurrently to both the Energy
12 Commission and the Regional Board. Of course,
13 understanding that the Commission has the
14 authority here, granted under the one-stop shop
15 provision.

16 So, I'm speaking from the standpoint of
17 the traditional hazardous waste agencies like
18 DTSC, the Regional Board and the federal USEPA.

19 Q Even though they have had experience
20 with the spills that have happened at the SEGS
21 facilities?

22 A Yes, and also let me mention the county.
23 The county has authority that's been delegated to
24 them. And, yes, they have the experience in
25 responding to the spills.

1 In the case of the county, the county
2 did issue a notice of violation for the 2005
3 spill; for failure to notify.

4 So there is some familiarity, but again
5 it's not as if, you know, you've got 30,000 gas
6 stations throughout the state, or 13 refineries,
7 or five permitted hazardous waste landfills.

8 It's a very, an unusual kind of
9 facility. And when you talk to regulators and you
10 ask them about their knowledge of HTF, they don't
11 know what it is. They don't even know how to
12 sample. They don't even know if method 8015,
13 which is the USEPA method that you cite in the
14 FSA, is an appropriate method to test for the
15 constituents of HTF, biphenyl and diphenyl oxide
16 or biphenyl ether, diphenyl ether.

17 So I'm saying yes, it is unfamiliar to
18 regulators, these kinds of facilities.

19 Q Is HTF the same as gasoline?

20 A No.

21 Q You made an analogy related to
22 refineries and spills of gasoline. Can you
23 describe the differences between HTF and gasoline?

24 A Well, I'll just state the obvious.
25 Gasoline contains benzene, a known human

1 carcinogen. HTF does not.

2 At the same time HTF is a extremely
3 hazardous substance, is recognized by the State of
4 California as an extremely hazardous waste, if
5 spilled. And presents risks to humans and the
6 environment when spilled.

7 Q Are you aware of a requirement, a legal
8 requirement that requires sampling of the location
9 of the spill?

10 A Yes. It's a paradigm that issues under
11 RCRA and Superfund, the same authority which has
12 been delegated to the states, and in turn to the
13 counties, that provided, through regulation and
14 guidance, a methodology to sample at a spill site
15 to determine impacts to the environment.

16 Q I'm not asking whether there's a
17 guideline. I'm asking whether it's required.

18 A Yes.

19 MS. GULESSERIAN: I'm going to just
20 object to the label. We're not here to have him
21 present the legal analysis for the applicant.

22 HEARING OFFICER CELLI: That's true, you
23 know, that's --

24 MS. LUCKHARDT: That's fine.

25 HEARING OFFICER CELLI: -- something

1 that we --

2 MS. LUCKHARDT: I can brief that.

3 HEARING OFFICER CELLI: -- the parties
4 can brief later, yes.

5 BY MS. LUCKHARDT:

6 Q And back to the differences between
7 gasoline and HTF, do you know if HTF is a RCRA
8 hazardous substance?

9 A No, as a matter of fact we don't, and I
10 was going to raise that in the testimony. It has
11 not been assessed.

12 We know it is a non-RCRA hazardous waste
13 in the State of California at concentrations
14 greater than 10,000 mg/kgm.

15 We do not know if it's a federal
16 hazardous waste. And that would require the USEPA
17 to conduct its own series of tests, toxicity
18 tests, to make that determination.

19 And I would put forward that that's a
20 determination that needs to be made.

21 Q You discuss the leaks that you've looked
22 at that have occurred at the same facilities. And
23 isn't it true that those leaks have occurred at
24 flanges or flexible connections or valves?

25 A No. I stated otherwise in my testimony.

1 Q Can you point to where it is that it's
2 somewhere on health?

3 A I just testified on that tonight.

4 MS. GULESSERIAN: Yeah, we just went
5 over that that was in attachment 22 of the
6 testimony and we summarized -- question for the
7 applicant, I mean based on the attachment that's
8 been submitted, the locations of the spills are
9 not noted at flanges and valves. And the rebuttal
10 testimony says that that is where most of the
11 leaks occur.

12 Based on the evidence in the record it's
13 showing that the leaks occur elsewhere, as well. I
14 don't have the number, but -- so, --

15 HEARING OFFICER CELLI: Well, I'm sorry,
16 maybe I misunderstood. I thought that you had
17 said that you'd actually gone through the list and
18 stated where the breaks occurred.

19 MS. LUCKHARDT: That was --

20 MS. GULESSERIAN: Right. Well, he can
21 read them again.

22 HEARING OFFICER CELLI: I just wanted
23 to, just to speed things up and say, okay, if
24 there were -- I forgot the characterization Ms.
25 Luckhardt made, but she said flanges and --

1 MS. LUCKHARDT: Valves and joints --

2 HEARING OFFICER CELLI: What other
3 places did these breaks occur at?

4 MS. LUCKHARDT: I'm wondering if he can
5 point to specific locations where it states that
6 it occurred somewhere else.

7 HEARING OFFICER CELLI: Can you do that,
8 Mr. Hagemann?

9 THE WITNESS: Yes, I'll repeat. And
10 it's an attachment to my November 12 testimony.
11 It's pretty much chronological in that testimony,
12 those attachments.

13 February 27, 2007, --

14 MS. LUCKHARDT: Okay, hold on.

15 HEARING OFFICER CELLI: The witness is
16 ready with the information, so --

17 THE WITNESS: Yeah, it's -- I don't have
18 it referenced to the pdf of this 439-page
19 documents, but I'll just read. And these
20 descriptions would be pulled straight without any
21 -- as quotes from the documents generated by FPL,
22 or their consultants.

23 February 27, 2007, a 1000-gallon spill
24 from a heat collection unit. March 27, 2007, a
25 35-gallon spill from twisting of oil pipe

1 assembly. January 9, 2006, 75-gallon spill from a
2 packing port on double ball joint assembly.

3 February 16, 2007, 30,000-gallon spill
4 from valve stem in 18-inch HTF pump bypass valve.
5 February 15, 2006, 4000-gallon spill from heat
6 collector element piping torque tube. And
7 December 30, 2006, 50-gallon spill because valve
8 was left open by a worker.

9 And let me just say that this was just a
10 partial review. I just started at the top and
11 went through and listed all that I had seen. So,
12 one was a valve, on the 30,000 gallons.

13 HEARING OFFICER CELLI: Well, it sounds
14 like a couple of them were valves. And there was
15 a valve stem --

16 THE WITNESS: Well, one is a valve that
17 was left open.

18 HEARING OFFICER CELLI: Right.

19 THE WITNESS: That's a worker error.

20 HEARING OFFICER CELLI: So a lot of them
21 were joints or -- thank you for that. Moving
22 right along.

23 MS. LUCKHARDT: I have nothing further.

24 HEARING OFFICER CELLI: Thank you. Any
25 redirect, if necessary?

1 MS. GULESSERIAN: No, no redirect.

2 HEARING OFFICER CELLI: We're going to
3 move on now. That was hazardous materials, is
4 that correct? And --

5 MS. GULESSERIAN: And waste management.

6 HEARING OFFICER CELLI: Oh, excellent.
7 So I've already received the evidence from CURE.
8 I think we're going to turn next to staff, unless
9 you're going to point the finger again to
10 applicant.

11 MR. BABULA: The applicant --

12 HEARING OFFICER CELLI: All right,
13 they're pointing to the applicant again. And, we
14 have not taken in the applicant's hazardous
15 materials and waste management exhibits, so maybe
16 we should do that now and then you can get into
17 direct.

18 MS. LUCKHARDT: Okay. Beginning with
19 hazardous materials applicant moves exhibit 10,
20 AFC section 5.6; exhibit 116, the preliminary PSA
21 comments section 2-D; exhibit 135, the PSA
22 comments on hazardous materials; exhibit 172, the
23 project design refinements section 4.1.4; exhibit
24 179, project design refinements section 4.2.3.

25 Exhibit 248, declaration of Duane

1 McCloud on hazardous materials; exhibit 262,
2 declaration of Howard Valentine on hazardous
3 materials; exhibit 266, declaration of Jared
4 Foster on hazardous materials; exhibit 303,
5 declaration of Russ Kingsley on hazardous
6 materials.

7 HEARING OFFICER CELLI: Any objection by
8 CURE to the hazardous materials evidence coming
9 in, Ms. Gulesserian?

10 MS. GULESSERIAN: No objection.

11 HEARING OFFICER CELLI: Staff, any
12 objection?

13 MR. BABULA: No objection.

14 HEARING OFFICER CELLI: Exhibits marked
15 for identification as 10, 116, 135, 172, 179, 248,
16 262, 266 and 303 are received into evidence.

17 MS. LUCKHARDT: Moving on to waste
18 management, applicant moves exhibit 20, AFC
19 section 516; exhibit 32, AFC appendix D; exhibit
20 40, AFC appendix I; exhibit 48, AFC appendix K-6;
21 exhibit 68, response to CEC data requests 54
22 through 57 with attachment DR-56.

23 Exhibit 97, the Beacon waste stream
24 quantities, revised table 5.16-6; exhibit 145, the
25 PSA comments on waste management; exhibit 175, the

1 project design refinements section 4.1.8; exhibit
2 182, the project design refinements section
3 4.2.6.1; exhibit 208, project design refinements
4 attachment 8.

5 Exhibit 253, declaration of Duane
6 McCloud on waste management; exhibit 263,
7 declaration of Janine Forrest on waste management;
8 exhibit 268, declaration of Jared Foster on waste
9 management; exhibit 276, declaration of Jim
10 Fickerson on waste management; exhibit 291,
11 declaration of Mike Arvidson on waste management;
12 exhibit 304, declaration of Russ Kingsley on waste
13 management.

14 Exhibit 332, rebuttal testimony of Duane
15 McCloud on waste management. And exhibit 333,
16 rebuttal testimony of Mike Flack on waste
17 management.

18 HEARING OFFICER CELLI: Any objection
19 from CURE?

20 MS. GULESSERIAN: No objection.

21 HEARING OFFICER CELLI: Any objection
22 from staff?

23 MR. BABULA: No objection.

24 HEARING OFFICER CELLI: Exhibits marked
25 for identification as 20, 32, 40, 48, 68, 97, 145,

1 175, 182, 208, 253, 265, 268, 276, 291, 304, 332
2 and 333 will be received into evidence.

3 And before you ask any questions I think
4 we've now received all of applicant's testimony,
5 is that --

6 MS. LUCKHARDT: We're going to run a
7 double-check.

8 MS. GULESSERIAN: I wanted to clarify
9 that when we moved to enter our exhibits in at the
10 beginning, that that was sufficient for purposes
11 of each issue area, and that we didn't need to go
12 through it again.

13 HEARING OFFICER CELLI: They're all
14 received, all of them. I have, just to be clear,
15 CURE, we've received exhibits 600 through 638;
16 636, I believe, was the one that is still pending,
17 okay?

18 MS. GULESSERIAN: I also have 639, which
19 was --

20 HEARING OFFICER CELLI: You're right,
21 639. I was looking at -- but that's the, 639 was
22 the request for environmental impact analysis. So
23 those are now received and they're in evidence.

24 For applicant we've received exhibits 1
25 through 336; and then we withdrew 103 and 212; and

1 received the -- after 336, what is your highest
2 number, Ms. Luckhardt?

3 MS. LUCKHARDT: 339.

4 HEARING OFFICER CELLI: Okay, so 336,
5 and then we received the biological resources, was
6 that what it was?

7 MS. LUCKHARDT: Yeah, those were the --

8 HEARING OFFICER CELLI: That's 338.

9 MS. LUCKHARDT: Yeah, the additional --

10 MR. BABULA: Should be bio -- soil and
11 water, bio and cultural.

12 MS. LUCKHARDT: Yeah, it's 337 are the
13 revised recommended conditions of certification
14 soil and water-1 with appendix I.

15 HEARING OFFICER CELLI: That's 337.

16 MS. LUCKHARDT: 337. 338 are the
17 revised conditions of certification for biological
18 resources; and 339 are the revised conditions of
19 certification for cultural resources.

20 HEARING OFFICER CELLI: Very good. And
21 those now have all been received into evidence
22 with the exception of two withdrawn exhibits.

23 MS. LUCKHARDT: Right. And just to
24 confirm, so then 198, which is a biology exhibit,
25 was received into evidence. If not, I move it at

1 this time.

2 HEARING OFFICER CELLI: Well, at this
3 time I'm just going to say that the record should
4 reflect and we've received into evidence exhibit 1
5 through 339, except exhibit 103 and exhibit 212.

6 MS. LUCKHARDT: That is correct.

7 HEARING OFFICER CELLI: And they're all
8 deemed received, so everybody's exhibits are in,
9 staff's 500 through 506. They're in the record,
10 so I think we're good on housekeeping now.

11 So, with that, if you wouldn't mind
12 calling your first witness.

13 MS. LUCKHARDT: Okay. And you want me
14 to dispense with the formalities at this point.
15 Is there any question about -- is there any need
16 for me to qualify these two gentlemen as experts?
17 Their r,sum,s have been previously filed.

18 HEARING OFFICER CELLI: Have they both
19 been sworn in? I know Mr. McCloud was sworn in.

20 MS. LUCKHARDT: Have you been sworn in?

21 MR. FLACK: Yeah, I was sworn in.

22 HEARING OFFICER CELLI: Okay, Is there
23 any objection to Mr. Flack or Mr. McCloud
24 testifying as experts by CURE?

25 No objection.

1 MR. BABULA: No objection.

2 HEARING OFFICER CELLI: No objection

3 from staff. So you may proceed.

4 Whereupon,

5 DUANE McCLOUD and MICHAEL FLACK

6 were recalled as witnesses herein, and having been

7 previously duly sworn, were examined and testified

8 further as follows:

9 DIRECT EXAMINATION

10 BY MS. LUCKHARDT:

11 Q Okay, at this point, Mr. McCloud, do you

12 agree with Mr. Hagemann's comments that the type

13 and leakage of HTF spills at SEGS should be

14 anticipated at Beacon?

15 MR. McCLOUD: No, I do not. I think we

16 touched on very briefly, the SEGS units go back to

17 a very long history. There has been a tremendous

18 amount, even through the series of SEGS units of

19 evolution and design, of evolution of safety

20 features.

21 And that evolution has continued. It

22 will continue into Beacon. We're going to walk in

23 the door of Beacon with 20-some years of lessons

24 learned as far as incorporation of design.

25 So I think that it's -- there's

1 definitely going to be a significant change,
2 significant improvement, significant modification
3 in what types of leakages we see at Beacon.

4 MS. LUCKHARDT: And Mr. Hagemann claims
5 that spills of HTF may result in significant
6 impacts to humans, wildlife and the environment.
7 To your knowledge have workers or the public been
8 harmed from the HTF spills at SEGS?

9 MR. McCLOUD: No, they have not. HTF,
10 by its nature, is a very contained product from
11 the perspective of it, as actually was referenced
12 earlier, kind of gets thick at ambient
13 temperature, or even solidifies up.

14 Spills, when we've had them at the SEGS
15 facilities, have been contained onsite. There has
16 been, with the exception as was mentioned
17 previously with smoke from some spills, we've not
18 had a spill that's gone outside the site that's
19 impacted any outside waterway, wildlife, et
20 cetera.

21 Likewise, as far as impact to humans
22 we've never had any kind of serious medical case
23 related to an HTF spill at the SEGS facilities.

24 MS. LUCKHARDT: And have all the spills
25 at the SEGS facilities been cleaned up?

1 MR. McCLOUD: Yes, as soon as the
2 situation is identified, as soon as a spill is
3 identified it's addressed and cleanup process
4 begins immediately.

5 MS. LUCKHARDT: And then you heard just
6 a moment ago Mr. Hagemann talk about spills
7 involving gasoline. Can you describe the
8 differences you would see between gasoline and
9 HTF?

10 HEARING OFFICER CELLI: I'm going to, if
11 I may interpose my own objection, I don't know
12 that that's really relevant here, because we don't
13 really need to know. You don't speak to gasoline,
14 there won't be gasoline at Beacon.

15 We understand gasoline --

16 MS. LUCKHARDT: I didn't say we --

17 HEARING OFFICER CELLI: -- is very
18 toxic, but I think he was just using it as an
19 illustration to make a point, but I don't think we
20 need to take the time to --

21 MS. LUCKHARDT: Okay, that's fine then.
22 No discussion.

23 Okay, you know you were just talking
24 about the design improvements. Were there design
25 improvements from the first SEGS facilities to the

1 later SEGS facilities?

2 MR. McCLOUD: Yes, definitely. In fact,
3 there was a reference made, it's in the testimony
4 previously, about the largest spill that ever
5 occurred at a SEGS unit a few years ago. That
6 actually occurred on one of the Kramer units. It
7 was due to a valve failure; the valve actually
8 blew its stem.

9 By the time the Harper Lake units were
10 designed, that valve -- actually that entire
11 piping setup and process configuration no longer
12 existed.

13 So, going from mid '80s into designs
14 that actually took place in the late '80s, there
15 had already been significant changes in design to
16 address safety concerns, as well as unit
17 efficiency.

18 MS. LUCKHARDT: And then you just heard
19 the list that Mr. Hagemann added of leaks on the
20 SEGS facilities. As you were listing to that list
21 were any of those leaks from straight pipe
22 sections?

23 MR. McCLOUD: No. Actually everything
24 that was identified was either some type of
25 fitting or, in some cases, they were actually heat

1 collection tubes. There was nothing in that list
2 that was a straight pipe run such as a header or a
3 primary feeder line.

4 MS. LUCKHARDT: So Mr. Hagemann's
5 suggestion that you use double-walled piping,
6 would that resolve any of those leaks?

7 MR. McCLOUD: No, it would not. We've
8 never had a leak in any of the SEGS units on a
9 straight line header or line of any significance.

10 MS. LUCKHARDT: Okay, the material
11 safety data sheets list potential hazards and
12 toxicological data from exposure, chronic exposure
13 to HTF. Does this automatically lead to the
14 conclusion that a spill of HTF may result in
15 significant impacts to the environment?

16 HEARING OFFICER CELLI: Just identify
17 who's speaking.

18 MR. FLACK: Mike Flack's going to
19 answer. The MSDS talks about the various health
20 risks. And chronic exposure would not be one of
21 those, given chronic, by definition, means
22 repeated exposure over a long duration.

23 If there would be a risk there would be
24 an acute risk due to handling of the material upon
25 its release. In the SPCC operational waste

1 management plan that's required, via conditions,
2 and the worker health and safety plan that's
3 required via conditions, would specify personal
4 protective equipment to manage that risk.

5 MS. LUCKHARDT: And are those plans
6 required by the conditions of certification?

7 MR. FLACK: Those plans are required and
8 SBC specifically is a LOR for this type of oil.
9 It's required under via the water waste discharge
10 waste discharge requirements listed in appendix H
11 of soil and water-1.

12 It's also listed in appendix E and F.
13 The operational waste management plan is condition
14 6. We were talking specifically about
15 identification of the waste and its
16 characteristics. That's waste condition 7, which
17 specifies that we need to get DTSC approval before
18 we can -- site-specific DTSC approval before we
19 can manage the material in terms of its
20 characteristic.

21 MS. LUCKHARDT: Do the Energy Commission
22 conditions of certification require staff review
23 of these plans?

24 MR. FLACK: They do. They actually
25 require the CPM review. And DI, as I mentioned,

1 waste 7, DTS review for that particular condition
2 in terms of what's considered a hazardous or
3 nonhazardous waste.

4 MS. LUCKHARDT: And, Mr. McCloud, just
5 to clear up this point. Will Beacon include an
6 onsite installed filtration system?

7 MR. McCLOUD: There is no plan of
8 installing such a system at Beacon. Actually
9 referenced previously, changes that were made
10 between Kramer and Harper, that was one of them.
11 The Harper plants do not have any type of onsite
12 permanently installed filtration system.

13 It is the practice, if there is a very
14 large spill, to -- in the interests of waste
15 minimization, to recover part of that free fluid.
16 That was actually previously mentioned.

17 At Harper, as with the case at Beacon,
18 if such a spill occurred, multiple equipment would
19 be used to recover that spill, that free liquid in
20 order to minimize the amount of soil contaminated.

21 MS. LUCKHARDT: And Mr. Hagemann just
22 made a comment about whether recovery of the HTF
23 was hazardous waste recycling. Can you comment on
24 that?

25 MR. McCLOUD: In his -- actually the

1 question's been asked. Currently DTSC does not
2 consider that to be recovery of a hazardous waste;
3 and that would include Kramer, where we actually
4 have an installed filtration system. Where we
5 would simply be talking about pulling a product,
6 or a part of the plant off the ground and putting
7 it back it came from, in this case.

8 MS. LUCKHARDT: Now your company
9 operates some of the SEGS units, correct?

10 MR. McCLOUD: Yes, we do.

11 MS. LUCKHARDT: So -- sorry for --

12 HEARING OFFICER CELLI: You know, as
13 long as you did, because I was going to ask a
14 question and then you started your question, but
15 it still bothers. Just want to make sure I heard
16 what you said just now correctly.

17 MR. McCLOUD: Um-hum.

18 HEARING OFFICER CELLI: I started to
19 make a note that DTSC does not consider, and I
20 wasn't able to type fast enough, but it sounded
21 like you were going in the direction of saying
22 that HTF is not --

23 MR. McCLOUD: No, no, I'm not at all.
24 Not at all. I'll clarify myself if I misspoke.
25 Does not consider recovery of free HTF as a

1 hazardous waste recycling or anything like that.
2 Simply a recovery of -- essentially part of the
3 operating part of the plant.

4 HEARING OFFICER CELLI: With the
5 expectation that you're just going to -- I mean
6 how would that work. If you don't mind my asking,
7 but this is going to be out in the desert, a sandy
8 area; cover the ground with all that polymer. I
9 just wonder, doesn't it pick up a bunch of other
10 materials?

11 MR. McCLOUD: Well, first of all, when
12 it's released most of all the compounds are gone.
13 We noted the light cloud, and Mr. Hagemann's
14 testimony correctly stated that you end up with a
15 wax-like substance. So what you're left with is
16 mostly very long chain hydrocarbons. Things are
17 not very mobile in the environment. Think of it
18 as a tar-like substance, okay.

19 That can be vacuumed up directly and
20 filtered to filter out the particulates. What is
21 residual, as Mr. Hagemann noted, needs to be
22 removed and sampled to insure that it didn't
23 migrate into the environment very far.

24 It wouldn't be expected to migrate very
25 far based on the nature of the material once it's

1 released.

2 HEARING OFFICER CELLI: Thank you very
3 much.

4 MR. McCLOUD: You're welcome.

5 HEARING OFFICER CELLI: You cleared up
6 that mystery for me.

7 MS. LUCKHARDT: Based on your operation
8 of the SEGS units, does handling an HTF spill an
9 unknown event?

10 MR. McCLOUD: Well, I'd kind of like to
11 say it was, but as has been pointed out in
12 testimony, there have been, you know, numerous HTF
13 spills over the years. It's something that the
14 plant is well verse in how to handle. There are
15 very specific processes that are followed when an
16 HTF spill occurs.

17 And it's something that's, while
18 undesirable, is certainly something that our
19 people are well trained to do.

20 MS. LUCKHARDT: Mr. Hagemann expresses a
21 concern about proper notification in case of
22 spills. Do the required plans address the
23 notification requirement?

24 MR. McCLOUD: Yes. The final -- a
25 number, several plans, but will include specific

1 notifications required if an HTF spill does occur.
2 Those procedures are in place in the existing SEGS
3 units, and they're continuously refined and
4 updated.

5 HEARING OFFICER CELLI: Are they noted
6 in a specific condition of certification?

7 MR. McCLOUD: The spill pollution
8 control and countermeasures plan that's requested
9 as a LOR. It's a requirement for oil, it's part
10 of the oil management. And then that's in
11 appendix E, F and H.

12 It's required. There's several
13 conditions in waste sections 6, 7 and 9, where
14 we're asked to do plans that require notifications
15 of -- I'm sorry -- operational waste management
16 plan.

17 HEARING OFFICER CELLI: Thank you. I
18 just needed to know where I could find it.

19 MR. BABULA: And some of those are
20 actually in the soil and water section, so you may
21 not have the right --

22 MR. McCLOUD: Yeah, we're jumping back
23 and forth. Thank you.

24 MR. BABULA: -- soil and water also
25 contains components. So E, F and H appendixes of

1 soil and water have a whole bunch of conditions
2 regarding waste discharge requirements and so
3 forth. So you're going to find stuff in there, as
4 well.

5 HEARING OFFICER CELLI: I appreciate
6 that. Maybe when we get to briefs we'll talk
7 about that kind of thing because we do need to
8 know where to find the information.

9 MR. BABULA: It's only a 1000-page
10 document.

11 HEARING OFFICER CELLI: I'm sorry,
12 please go ahead.

13 MS. LUCKHARDT: Do you agree, based on
14 the experience in the spills at SEGS, that
15 regulators are not used to regulating a substance?

16 MR. McCLOUD: No. In the case of the
17 SEGS facilities regulators involved in as far as
18 regulating the facilities are, I believe, have a
19 very good understanding of the product and
20 understanding of what it means to manage the HTF
21 at the site.

22 MS. LUCKHARDT: Turning to the items
23 attached to Mr. Hagemann's testimony, does the
24 timeline contained in his exhibit 629, which is a
25 letter to Mr. Joe -- I'm going to try this --

1 Kowsky (phonetic) from Mr. Dan Brake describe an
2 immediate response by the facility to address the
3 leak?

4 MR. McCLOUD: Actually, yes, it does.
5 If an HTF leak does occur, the single and most
6 important action is to stop that HTF leak; prevent
7 it from any contamination or any spreading beyond
8 where it is.

9 And then, you know, as soon as it's
10 physically possible, the cleanup operation. That
11 is actually described in that letter.

12 MS. LUCKHARDT: Is it in Beacon's self
13 interest to reduce the number and amount of
14 spills?

15 MR. McCLOUD: Yes, definitely. Not only
16 just purely from an environmental standpoint,
17 which is obviously the most important reason. But
18 also from an operational standpoint. If spills
19 occur, even if it's a fairly minor spill, it, by
20 definition, represents part of the project or part
21 of the plant that's not available for service.

22 And it's clearly in the best business
23 plan of the plant to keep everything going,
24 everything performing.

25 MS. LUCKHARDT: And, Mr. Flack, in your

1 professional judgment, are the notification
2 requirements that are contained in the hazardous
3 materials management plan and spill prevention --

4 MR. FLACK: Pollution control and
5 counter-measure.

6 MS. LUCKHARDT: Thank you. And the
7 worker safety and health plan -- worker health and
8 safety plan adequate to resolve potential spills
9 at Beacon?

10 MR. FLACK: They are. And I'd add that
11 there's an emergency response plan required for
12 the project, as well, if I'm not mistaken. So,
13 there's notification requirements for this type of
14 material.

15 MS. LUCKHARDT: There was a comment that
16 was made by Mr. Hagemann about soil without
17 testing. Can you address that comment?

18 MR. FLACK: I can try. I think what he
19 was trying to get at is the material should be
20 characterized before it's managed, if I'm not
21 mistaken. And what his argument was, was the
22 material shouldn't be excavated and moved to the
23 LTU; rather it should be moved and placed on
24 plastic or some type of impermeable material. In
25 this case I would say plastic was mostly done,

1 some 60 mil type plastic is usually used.

2 Sampled for characterization. And what
3 I mean by that is it should be sampled to the DTSC
4 criteria. The first thing would happen in the
5 project is once the material is released, by waste
6 condition-7, and what was written in the report of
7 waste discharge, a sampling program would ensue
8 such for material that had accumulated, such that
9 we would be able to sample it. And then provide
10 that sampling information to the DTSC for a
11 determination of what would be hazardous or
12 nonhazardous.

13 Because the formulation of HTF hasn't
14 changed, we said in the AFC that it would probably
15 be similar to 10,000 mg/kgm guide that the DTSC
16 has used before. Though noting that the DTSC
17 specifically stated that they would have to have a
18 site-specific determination.

19 So what we would do once that was done
20 was if there was a subsequent release, the
21 material would be excavated, piled onto plastic;
22 covered; and sampled for characterization.

23 At that point in time it could be
24 determined whether or not it could go to the LTU
25 or not if it was above 10,000 mg/kgm, it would be

1 hauled offsite.

2 MS. LUCKHARDT: And then Mr. Hagemann
3 made a comment about miners at the remediation
4 area. Can you respond to that?

5 MR. FLACK: There was actually two
6 comments. There was the comment in my testimony
7 about an impermeable surface, and what I was
8 getting at was what I just mentioned Is we would
9 take the material; put it onto some plastic
10 material prior to characterization.

11 With regard to the LTU, we designed the
12 LTU consistent with Title 27 requirements, under
13 the report of waste discharge, review of the
14 Regional Water Quality Control Board and the
15 staff.

16 That particular facility has operated
17 without problem, as I understand it, for those 20-
18 plus years at the SEGS facility.

19 So it is a clay material. It is
20 impermeable in a sense that the material resides
21 there for like about four to six months. So there
22 isn't much of an opportunity for this material to
23 migrate. In fact, the material, itself, once it's
24 released as noted, wax-like substance, it doesn't
25 tend to move in the environment much. Particularly

1 vertically through a clay.

2 HEARING OFFICER CELLI: Any further
3 examination?

4 MS. LUCKHARDT: Is there anything else
5 either of you would like to add?

6 MR. FLACK: I'm just going to say a lot
7 of the questions that Mr. Hagemann had were good
8 specific questions regarding how waste is managed
9 and characterized.

10 If I look at the FSA and the conditions
11 of certification, there's several sections that
12 have specific plan requirements. Those specific
13 plan requirements will detail the procedures and
14 the protocols for management of this waste
15 material if it's released.

16 So I would say it's in the conditions.
17 SPPC and operational waste management plan are two
18 things that need to be done, and will specifically
19 address many of his concerns, I believe.

20 MS. LUCKHARDT: The witnesses are
21 available for cross.

22 HEARING OFFICER CELLI: CURE, cross?

23 CROSS-EXAMINATION

24 BY MS. GULESSERIAN:

25 Q Mr. McCloud, in rebuttal you described

1 the design for Beacon. Are those site facilities
2 laid out in sections like those proposed for
3 Beacon? In other words, you put in your rebuttal
4 testimony that the solar field is separated into
5 four to ten sections.

6 MR. McCLOUD: That's correct.

7 MS. GULESSERIAN: Is that the same as
8 the facility layout for Beacon?

9 MR. McCLOUD: You asked if Beacon was
10 the same as Beacon.

11 MS. GULESSERIAN: Excuse me. Are the
12 SEGS facilities laid out in sections like those
13 proposed for Beacon?

14 MR. McCLOUD: Not like Beacon. They are
15 laid out in sections, however.

16 MS. GULESSERIAN: Okay. In your
17 rebuttal testimony you stated that -- well, go
18 back to that design. Can you describe the design
19 of the Beacon project in a little bit more detail?

20 MS. LUCKHARDT: Are we talking about
21 something that's already in the documents? You're
22 asking him the design --

23 (Parties speaking simultaneously.)

24 MS. LUCKHARDT: -- to describe the --

25 MS. GULESSERIAN: Okay, you're --

1 MS. LUCKHARDT: -- design of the Beacon
2 project?

3 MS. GULESSERIAN: Just a minute.

4 Okay, we'll get there. In your rebuttal
5 testimony you stated that leaks most often occur
6 at valves and flanges. Where do spills otherwise
7 occur? If they're most often at valves and
8 flanges, where else?

9 MR. McCLOUD: Other fittings.
10 References were made to ball joints previously.
11 Again, connections at BHCE tubes, themselves.
12 Again, at fittings and joints.

13 MS. GULESSERIAN: In your rebuttal
14 testimony you stated that as much as 115,000
15 gallons of HTF is contained between isolation
16 valves in the main header and east/west laterals
17 that supply each section.

18 In a failure of a valve on the main
19 header or east/water lateral section, is it true
20 then that the maximum potential spill may be
21 115,000 gallons of HTF?

22 MR. McCLOUD: No, it's not. Because a
23 valve failed does not mean that the entire
24 contents of the pipe it's connected to are
25 immediately going to shoot out into the

1 environment.

2 In the event of a failure on the main
3 header, the plant would immediately begin to be
4 shut down. It's essentially de-pressurizing the
5 plant. So that the driving force for the HTF to
6 leak is immediately turned off.

7 MS. GULESSERIAN: Okay. And so what
8 would the maximum potential spill then be on that
9 main header?

10 MR. McCLOUD: I cannot answer that.

11 MS. GULESSERIAN: Okay. Do you consider
12 a vapor cloud from an HTF spill that requires
13 shutdown of a state highway to constitute offsite
14 transport?

15 MS. LUCKHARDT: Are you looking at
16 offsite transport of the product, itself? Can you
17 provide some more specificity of what you're
18 asking?

19 MS. GULESSERIAN: Sure. I'll refer to
20 their rebuttal testimony to be more specific.

21 (Pause.)

22 HEARING OFFICER CELLI: Maybe we can
23 come back to this question --

24 MS. GULESSERIAN: Yes.

25 HEARING OFFICER CELLI: -- other areas

1 of --

2 MS. GULESSERIAN: With that question.

3 Well, actually, --

4 HEARING OFFICER CELLI: Unless this is
5 your last question?

6 MS. GULESSERIAN: Okay, you were
7 describing what the practice is to recover free
8 liquid in the event of a spill. Is it correct
9 that you're saying it's going to be vacuumed up?

10 MR. McCLOUD: Essentially, yes.

11 MS. GULESSERIAN: Okay. And where is it
12 going to be vacuumed up from? From right where it
13 spills?

14 MR. McCLOUD: Right where it spills,
15 yes.

16 MS. GULESSERIAN: Okay. And what is it
17 vacuumed into?

18 MR. McCLOUD: It will go into a truck,
19 called a suck truck, but a vacuum truck.

20 MS. GULESSERIAN: Okay. And where does
21 that truck then go?

22 MR. McCLOUD: It would take the product,
23 return it to one of the storage tanks, HTF storage
24 tanks in the system. So we would return it back
25 to the system.

1 MS. GULESSERIAN: And do you just -- you
2 return it directly into the system? Or do you
3 filter it? This sand and dirt or other
4 contaminants?

5 MR. McCLOUD: There is typically a
6 strainer on the suction side of the vacuum truck,
7 so that the dirt or sand or whatever is, for the
8 most part, left behind. Again, it's a process
9 with free liquid, so we're not trying to pull mud
10 out, and pull the HTF out of anything. So it's
11 simply the free liquid that's sitting on top, it's
12 clearly free liquid.

13 MS. GULESSERIAN: Okay. So is there a
14 filtration facility?

15 MR. McCLOUD: No.

16 MS. GULESSERIAN: Okay, so it's on the
17 back of a truck?

18 MR. McCLOUD: Yeah, it would be in the
19 line of the truck, on the back of a truck.

20 MS. GULESSERIAN: So your filtration is
21 occurring on the back of the truck. And then the
22 HTF is being put directly into a tank?

23 MR. McCLOUD: Correct.

24 MS. GULESSERIAN: Back to the offsite
25 release. You said that, in your rebuttal

1 testimony, that this spill --

2 MS. LUCKHARDT: Where are you, just so
3 we can have it?

4 MS. GULESSERIAN: I'm on exhibit 332,
5 page 3.

6 MS. LUCKHARDT: Thank you.

7 MS. GULESSERIAN: That this large spill
8 nonetheless resulted in no offsite release of HTF
9 and all contaminated soils.

10 So, my question was, offsite release,
11 was do you consider a vapor cloud from an HTF
12 spill that requires shutdown of a state highway to
13 constitute -- I'll correct my question -- an
14 offsite release?

15 MR. McCLOUD: It's an offsite release,
16 it's not an offsite release of HTF.

17 MS. GULESSERIAN: Okay.

18 MR. McCLOUD: Smoke, it was an offsite
19 release of smoke that evolved from the HTF
20 release. Maybe it's semantics, but --

21 MS. GULESSERIAN: I'll move on in the
22 interest of time, but I might have to return to
23 Mr. McCloud.

24 HEARING OFFICER CELLI: Appreciate it.

25 MS. GULESSERIAN: Mr. Flack, in

1 determining whether free-standing HTF from an HTF
2 release is or is not nonhazardous waste, where
3 will the HTF be sampled following a spill?

4 MR. FLACK: This is after we vacuumed up
5 the free liquids for recycling. So what's
6 residual then is what's residual in the soil. I
7 would imagine the SPCC plan would specify a sample
8 protocol for sampling the soil in a manner that
9 would characterize what was removed, both in terms
10 of what stockpiled via the removal. And then to
11 verify that the material had been removed from the
12 soil in a manner that would suggest a clean
13 removal.

14 MS. GULESSERIAN: So are you saying that
15 there's no -- you are vacuuming in every instance
16 and there's no free-standing HTF?

17 MR. FLACK: That's correct.

18 MS. GULESSERIAN: Okay.

19 MR. FLACK: Because the liquid, you
20 can't manage a liquid hazardous waste.

21 MS. GULESSERIAN: Okay. And then with
22 the resulting soil that's left underneath, where
23 are you testing that to determine whether it is or
24 is not a --

25 MR. FLACK: You would remove probably to

1 visual initially, and stockpile the visual on
2 plastic. You'd then sample the stockpile via
3 composite methods or methods that would be
4 approved through the SPCC plan.

5 That would characterize the material via
6 the DTSC process, whether it was going to be sent
7 to the LTU or taken off as hazardous waste.

8 You would then return to the excavation
9 and you would sample the excavation in a manner
10 that confirmed that all the material was removed.
11 So you would sample the in-place soils.

12 There's a two-part process there.
13 There's a part to characterize the material that
14 was excavated for taking it to the LTU or not.
15 And then there's a second process which means you
16 would sample the soil to confirm its removal from
17 the environment.

18 MS. GULESSERIAN: In the application for
19 certification and the testimony that's been filed
20 in this proceeding, the description of the
21 handling of contaminated soils states that the
22 soils will be moved directly to the land treatment
23 unit.

24 Is there -- could you point to me where
25 you've included in your project this process for

1 moving the soil to a plastic --

2 MR. FLACK: We haven't done that because
3 I'm giving you the plans that are required, the
4 SPCC plan, the operational waste management plan,
5 or where that's going to be discussed in detail.

6 MS. GULESSERIAN: So, --

7 MR. FLACK: Which is a requirement of
8 certification.

9 MS. GULESSERIAN: Why are there no
10 provisions for handling the spill of free-standing
11 HTF included in the application or the report of
12 waste discharge? That have been filed so far in
13 this proceeding.

14 MR. FLACK: The report of waste
15 discharge was written specifically to manage the
16 waste. It wasn't a spill pollution control and
17 countermeasures plan. It was a waste management
18 plan to look at the residual. It excluded the
19 management of the free-standing liquid.

20 MS. GULESSERIAN: So the report of waste
21 discharge excludes the management of handling
22 free-standing HTF?

23 MR. FLACK: Because it's a recycled
24 material.

25 MS. GULESSERIAN: Okay. Could I go back

1 and ask a question about this plastic area where
2 the soils are contained. Where is that located?

3 MR. FLACK: Actually you take the
4 material from where it was released and place it
5 right next to -- stockpile it right next to where
6 the release was. That would be the intent.

7 And, again, this would be something that
8 we would write -- that would be written into the
9 SPCC plan.

10 MS. GULESSERIAN: Okay. Is that -- I
11 guess, again, is that described anywhere in the
12 application for certification for this project?
13 And if so, can you point to me where?

14 MR. FLACK: It's not described in there
15 because it wasn't written to the level of detail
16 in the application for certification. What was
17 written was then the --

18 MR. BABULA: It's in the FSA.

19 MR. FLACK: -- I'm sorry, in the FSA, as
20 well. And it was not -- is it in the FSA?

21 HEARING OFFICER CELLI: Actually this is
22 testimony, it's --

23 MR. FLACK: I'm sorry, you're right,
24 you're right, I'm sorry.

25 (Laughter.)

1 MR. FLACK: To my knowledge it was not
2 in the application for certification; neither was
3 it in the report of waste discharge because we
4 stated in the report of waste discharge that we
5 would take the material up and move it into the
6 LTU upon characterization. Okay.

7 So we did not talk about the free-
8 standing liquids because at the time that was
9 going to be a recycled material to be taken up and
10 recycled into the process.

11 So what's residual, then, is what's
12 contained on at the soil.

13 MS. GULESSERIAN: Okay, in the final
14 staff assessment, and I can find the page, it
15 describes that plastic sheeting will be placed on
16 top of the contaminated soil in the land treatment
17 unit. Is that what you're referring to when you
18 talk about plastic --

19 MR. FLACK: That's one of the ways of
20 managing the waste, correct. That was one of the
21 statements.

22 MS. GULESSERIAN: Okay. And is that
23 different than what you're describing today --
24 tonight? The plastic that is placed on the soil
25 somewhere near where the spill occurs?

1 MR. FLACK: There's ways of managing it.
2 You take it out from the excavation area right
3 where it's spilled and put it onto plastic;
4 characterize it; then move it over. It still
5 stays, and it's covered with plastic, in the LTU,
6 as well.

7 MS. GULESSERIAN: What's the potential
8 size of this plastic area where contaminated soil
9 is --

10 MR. FLACK: Obviously depends on the
11 size of the waste, but you can put a lot of
12 plastic down for a large excavation, excavated
13 material. I've done it many times.

14 (Pause.)

15 MS. GULESSERIAN: Excuse me, this is
16 technical. I need to --

17 HEARING OFFICER CELLI: How much --

18 MR. BABULA: I'm going to be quick if
19 that's your --

20 HEARING OFFICER CELLI: -- while CURE is
21 conferring --

22 MR. BABULA: We mainly want to clear up
23 a few things.

24 HEARING OFFICER CELLI: I just want to
25 know who -- we haven't heard from -- how much time

1 are you thinking?

2 MR. BABULA: About five minutes. As
3 soon as she's done we're ready to -- but then I
4 don't know how much cross she's going to have.

5 HEARING OFFICER CELLI: I'd just note
6 that it's ten minutes to 9:00. We've all been
7 very patient and --

8 MS. GULESSERIAN: Okay, I guess --

9 HEARING OFFICER CELLI: -- you should be
10 winding down --

11 MS. GULESSERIAN: I'm trying to learn
12 about this plastic area that I've never heard
13 about before.

14 BY MS. GULESSERIAN:

15 Q Is it -- can you describe to me a little
16 bit more the thickness of this plastic material?

17 HEARING OFFICER CELLI: I'm going to --
18 I just want to say that, you know, we've seen
19 loads of spills where they put that blue and black
20 plastic over a mound of dirt of varying sizes.
21 The sky's the limit on how big a size; depends on
22 the spill.

23 And rather than go into this area of how
24 much, what size is the plastic and that kind of
25 thing, I wonder if we could just keep it relevant

1 to their testimony --

2 MS. GULESSERIAN: I'd like to have, get
3 the facts in the record to determine whether they
4 are meeting the statutes that I am aware of. So I
5 just need to ask a few questions about what these
6 facts are, because they're not --

7 HEARING OFFICER CELLI: Do you mind if I
8 ask how few questions?

9 MS. GULESSERIAN: I'm almost done. It's
10 just that this is new. Actually I didn't really
11 have much more.

12 MS. LUCKHARDT: Well, I guess I just
13 have a general comment at this point. We don't
14 have a spill. We're not designing for a specific
15 situation.

16 We're talking about the level of
17 analysis that we need to end at for a permitting
18 level of this project. And I think that this
19 level of detail is unnecessary at this point for,
20 to determine permitting of this project.

21 HEARING OFFICER CELLI: Well, I'm just
22 going to allow a few more questions,. If it is
23 relevant, then I'm going to allow her to just
24 briefly ask a couple more questions. And then
25 we've got to move on. So if we can finish this

1 area, I would appreciate it.

2 MS. GULESSERIAN: Okay. Will the
3 plastic be placed directly on the soil?

4 MR. FLACK: Echoing Jane's comments,
5 this would be detailed in an SPCC plan. The
6 intent of removing material from an HTF release
7 would be to put plastic down on the ground and
8 putting the excavated materials on top of the
9 plastic temporarily, and then covering the plastic
10 while you were characterizing the material.

11 Upon characterization of the material,
12 it would be moved to the LTU. Set in the LTU and
13 covered with plastic and staged for biological
14 treatment.

15 MS. GULESSERIAN: Okay, thank you.

16 MR. FLACK: Does that make sense?

17 MS. GULESSERIAN: It makes sense. And
18 just for clarification, the LTU, is it correct,
19 that it's an unlined -- the LTU is an unlined --

20 MR. FLACK: No, --

21 MS. GULESSERIAN: As Mr. -- if you were
22 listening to Mr. Hagemann's testimony, he
23 described what he read in the FSA that it's on a
24 clay, low permeable layer underneath?

25 MR. FLACK: The LTU is --

1 MS. GULESSERIAN: Does the FSA correctly
2 describe --

3 MR. FLACK: The FSA is correct.

4 MS. GULESSERIAN: Okay.

5 MR. FLACK: And his testimony to what is
6 absolutely correct.

7 MS. GULESSERIAN: Okay, thank you.

8 MR. FLACK: You're welcome.

9 HEARING OFFICER CELLI: Glad we cleared
10 that up.

11 MS. GULESSERIAN: I have no further
12 questions.

13 HEARING OFFICER CELLI: Thank you.

14 MS. GULESSERIAN: Thank you.

15 HEARING OFFICER CELLI: In fact, I've
16 almost lost where -- oh, cross of these witnesses
17 by staff?

18 MR. BABULA: I have no questions.

19 HEARING OFFICER CELLI: Redirect?

20 MS. LUCKHARDT: Just a couple of
21 questions here.

22 REDIRECT EXAMINATION

23 BY MS. LUCKHARDT:

24 Q Mr. Flack, you were just asked --

25 MR. FLACK: Sorry.

1 MS. LUCKHARDT: You were just asked
2 about the liner and the land treatment unit. Do
3 you have any concerns about how that is being
4 treated as far as the compaction, that it's clay
5 soil that's being used, or whether that should
6 have an additional liner?

7 MR. FLACK: The LTU is designed under
8 Title 27 requirements. And it will operate, there
9 is a program to compact the clay. There's a
10 program to manage the waste and sample yearly on
11 an annual basis to confirm there would be no
12 leakage through the clay liner.

13 Performance at SEGS would tend to
14 suggest that this particular design works very
15 well. The material, itself, isn't mobile in the
16 environment. It's not going to leak, you know,
17 come out of solution from the matrix -- it's bound
18 in -- and leak through the clay. It just isn't
19 that kind of material once it's released. So the
20 design, itself, has shown itself to perform well.

21 And we have the other thing that's
22 important to understand, too, is the variable
23 depth of the groundwater. In the area for the LTU
24 it's about 260 feet to groundwater.

25 HEARING OFFICER CELLI: Next question?

1 MS. LUCKHARDT: Mr. McCloud, does the
2 letter that is included as exhibit 629 describe a
3 sampling protocol after a spill at one of the SEGS
4 facilities?

5 MR. McCLOUD: Yes, it does.

6 MS. LUCKHARDT: I think I'm going to
7 leave it at that.

8 HEARING OFFICER CELLI: No further
9 redirect?

10 MS. LUCKHARDT: Nothing.

11 HEARING OFFICER CELLI: Limited to the
12 scope of the questions on redirect, any cross from
13 CURE?

14 MS. GULESSERIAN: No further questions.

15 HEARING OFFICER CELLI: Any cross from
16 staff?

17 MR. BABULA: No.

18 HEARING OFFICER CELLI: Thank you. Any
19 further witnesses?

20 MS. LUCKHARDT: No.

21 HEARING OFFICER CELLI: Thank you. Now
22 where we are is with staff, right? Have your
23 witnesses been sworn?

24 MR. BABULA: They have not. They need
25 to be sworn in.

1 HEARING OFFICER CELLI: Swear two more
2 witnesses in.

3 Whereupon,

4 ELLEN TOWNSEND-HOUGH and GEOFFREY LESH
5 were called as witnesses herein, and after first
6 having been duly sworn, were examined and
7 testified as follows:

8 HEARING OFFICER CELLI: Please state
9 your names and spell them for the record.

10 MS. TOWNSEND-HOUGH: My name is Ellen
11 Townsend-Hough. Townsend, T-o-w-n-s-e-n-d hyphen
12 H-o-u-g-h.

13 MR. LESH: I'm Geoffrey Lesh, it's
14 G-e-o-f-f-r-e-y L-e-s-h.

15 MR. BABULA: Okay, thank you.

16 DIRECT EXAMINATION

17 BY MR. BABULA:

18 Q I'm going to start with Ellie, who is
19 dealing with the waste and hazardous waste
20 management.

21 So you just heard all this testimony,
22 and I think there's some confusion or there seems
23 to be we need some clarification on the process of
24 spills. Can you just quickly go through and try
25 to address that comment and any other issues that

1 come up?

2 MS. TOWNSEND-HOUGH: Okay. Ellie
3 Townsend-Hough. I guess it's just important to
4 note that as the technology has improved, the
5 regulators have also improved.

6 We are working together with both the
7 Regional Board and DTSC. And we also are working
8 with staff in the soil and water area to establish
9 ways to better manage any of the HTF spills.

10 And basically, as was described by the
11 applicant, it there's a spill there's a staging
12 area, and then there is determination what goes to
13 the land treatment unit.

14 Depending on what the Department of
15 Toxic Substances Control establishes as a
16 hazardous criteria, whether it's 10,000 mg/kgm, or
17 something lower, wherever that cutoff is,
18 whatever's nonhazardous, only a nonhazardous
19 substance can go into land treatment unit.

20 A hazardous substance, anything like
21 greater than 10,000 mg/kgm, depending on DTSC's
22 determination, would go to a class 1 landfill.

23 There has to be a staging area to
24 determine what's hazardous and what is not
25 hazardous. Staff set up a series of data

1 requests, and the data responses were addressed in
2 the applicant's refinement. I think it's the
3 supplemental document in the refinement.

4 There is actually a description how the
5 waste would be handled. There is also a
6 description that actually shows where the land
7 treatment unit is. And it talks about the cutoff.

8 There is also descriptions --

9 MS. GULESSERIAN: I'm sorry, do you know
10 what we're referring to here as far as an exhibit
11 goes?

12 MS. TOWNSEND-HOUGH: It's the
13 refinement. I don't know the number of -- I think
14 that's it, it's like the biggest document we
15 received, the project refinements.

16 HEARING OFFICER CELLI: Okay, and so do
17 we have an exhibit number?

18 MR. BABULA: It's one of the applicant's
19 exhibits.

20 (Parties speaking simultaneously.)

21 MS. LUCKHARDT: That's broken up into a
22 million different exhibits, because it's by
23 subject areas, so.

24 (Parties speaking simultaneously.)

25 MS. TOWNSEND-HOUGH: It should be a

1 section just under waste, and it talks about the
2 land treatment for HTF spills.

3 Okay. And also in the Board's waste
4 discharge requirements, the Board has described in
5 their appendices, exactly how the waste is
6 supposed to be handled, whether it's hazardous or
7 nonhazardous.

8 We've gone -- what we tried to do is
9 we've asked for a spill prevention counter control
10 measure plan. We've also asked for a very
11 comprehensive operation management plan. We've
12 asked for sampling. And all of these are in the
13 conditions of certification. Conditions of
14 certification-6, conditions of certification-7 and
15 condition of certification-9.

16 So what we've tried to do is be very
17 rigorous on the handling of the HTF spills.

18 MR. BABULA: In your opinion, based on
19 your work in this area, your analysis, reviewing
20 all the testimony, do you believe that this
21 facility can operate in a safe manner to both
22 human and the environment?

23 MS. TOWNSEND-HOUGH: Yes, I do.

24 MR. BABULA: Should I just --

25 HEARING OFFICER CELLI: Mr. Lesh, you

1 might as well go ahead and ask your questions
2 there.

3 BY MR. BABULA:

4 Q So, Mr. Lesh, let's see, now you were
5 doing more the engineering. You submitted
6 supplemental testimony. We won't have to go over
7 that, but are there are a couple areas that have
8 come up that you'd like to address regarding some
9 of the stuff that Mr. Hagemann has brought up?

10 HEARING OFFICER CELLI: I wonder if just
11 rather than fight an objection, we focus his
12 testimony a little more, specifically what's in
13 the record.

14 MR. BABULA: It's so easy to read it in
15 the record, it's right there.

16 HEARING OFFICER CELLI: If you wouldn't
17 mind. Just narrow the testimony.

18 MR. BABULA: Okay.

19 MR. LESH: The area that I want to focus
20 on is hazardous materials management, in which we
21 are focused on maintaining control of any
22 hazardous materials onsite. And maintaining their
23 containment so that up until the moment they're
24 released accidentally, then they become waste,
25 hazardous waste.

1 But up until the moment of loss, like
2 containment and leaks and those sorts of things is
3 the area where I'm focused. And the purpose of
4 the section is to prevent offsite consequences
5 from releases that could impact the public.

6 So, with that in mind we review how the
7 material is being contained, the specifications
8 it's being held within, whether they're API or
9 ASM codes, and what kind of secondary containment
10 they have underneath their expansion tanks and
11 heat exchangers, et cetera.

12 Some of the comments that I think I need
13 to address were the ones that came from Mr.
14 Hagemann. Specifically recommended, you know, why
15 not double-wall piping. And I concur with the
16 applicant that where the leaks are occurring are
17 in joints, flanges, valves, flex tubes, ball
18 joints, things that you have to make and break,
19 have lots of pieces in them.

20 The more of them you have the more
21 potential you have for small leaks to occur, and
22 they take diligence.

23 For the most part, these things don't
24 offer an impact in the offsite public because the
25 material that's leaking has low toxicity and low

1 vapor pressure, low volatility.

2 The entire site -- and the solar field
3 is bermed. Any leaks, even a big one, will not
4 run offsite. Anything in the power block, where
5 the big spill did occur when they blew a valve
6 stem at one point, remains within the power block
7 because it's also bermed separately as secondary
8 containment areas. And in the event that you have
9 a big spill, it gets cleaned up. There is no
10 significant risk to the offsite public.

11 For protecting onsite employees that's
12 handled in our worker safety and fire protection
13 sections, and it's covered by different sets of
14 rules which come from OSHA through Cal-OSHA. In
15 there we look at worst compliance.

16 And between all these things we make
17 sure that there is personal protective gear
18 issued; that we have all the safety plans; the
19 spill management plans; and the reporting plans to
20 the appropriate agencies.

21 MR. BABULA: Just to summarize, based on
22 your information and reviewing the applicant's
23 information and all the testimony, do you feel
24 this plant can operate safely with regards to HTF
25 fluid?

1 MR. LESH: I do.

2 MR. BABULA: No further questions.

3 HEARING OFFICER CELLI: Thank you.

4 Applicant, cross?

5 MS. LUCKHARDT: I have no cross.

6 HEARING OFFICER CELLI: CURE, cross?

7 CROSS-EXAMINATION

8 BY MS. GULESSERIAN:

9 Q Mr. Lesh, I'm referring to your
10 testimony. You state that there's 1.3 million
11 gallons of HTF contained in the pipes and heat
12 exchanger, is this correct?

13 MR. LESH: To my recollection, yes.

14 MS. GULESSERIAN: Okay, is this what you
15 based your analysis of potential impacts on?

16 MR. LESH: Yes.

17 MS. GULESSERIAN: Before reviewing Mr.
18 Hagemann's testimony and hearing what you heard
19 today, were you aware that there is free-standing
20 HTF below a spill that involves a cleanup process?

21 MR. LESH: Yes.

22 MS. GULESSERIAN: Okay, can you tell me
23 where in the final staff assessment this process
24 is described and analyzed?

25 MR. LESH: It's not described in the

1 hazardous materials management section.

2 MS. GULESSERIAN: Is it analyzed?

3 MR. LESH: That would be results of a
4 spill, so it would be a waste issue.

5 MS. GULESSERIAN: Okay. I'm trying to
6 cut down my questions. I'm skipping some.

7 Before hearing what you heard today,
8 were you aware that there is a interim process, my
9 words for it, for handling contaminated soils
10 after a spill? By interim I mean some other --
11 this plastic staging area prior to placement in a
12 land treatment unit, for testing for hazardous
13 waste.

14 MR. BABULA: Is that Ellie's --

15 MS. GULESSERIAN: Hazardous materials, I
16 don't know --

17 MR. BABULA: She's hazardous materials
18 once it's in the ground. He would be the piping
19 and leak --

20 MS. GULESSERIAN: Okay.

21 MR. BABULA: I don't know if you're
22 asking the right person.

23 MS. GULESSERIAN: Okay. Let me see if I
24 have any other questions for Mr. Lesh first.

25 (Pause.)

1 BY MS. GULESSERIAN:

2 Q Are you -- is it your area to analyze
3 the recycling of HTF that we heard about today?
4 Do you analyze recycling of hazardous substances?

5 MR. LESH: No.

6 MS. GULESSERIAN: Okay.

7 MR. LESH: Not specifically, no.

8 MS. GULESSERIAN: And did you analyze
9 the recycling of HTF as part of this project?

10 MR. LESH: No.

11 MS. GULESSERIAN: You stated that you
12 analyzed 1.3 million gallons of HTF in the system.
13 This is in your written testimony. Are you aware
14 that in the soil and water section of the FSA
15 staff states that approximately 2.4 million
16 gallons of HTF will be utilized at any one time at
17 the facility?

18 MR. LESH: I learned that today.

19 MS. GULESSERIAN: Okay. So it's safe to
20 say that since it says 1.3, and you analyzed 1.3,
21 you have not yet analyzed 2.4 million gallons of
22 HTF?

23 MR. LESH: Given the material, the
24 volume of it, provided the applicant does as they
25 stated in their designs that they would have

1 containment for that, plus rainfall, berming,
2 secondary containment, it's low toxicity and low
3 volatility, it would be still okay.

4 That particular volume didn't come into
5 the analysis. It's the way it's managed that
6 comes into the analysis.

7 Unless it's something that has potential
8 for moving offsite, which would be a more toxic
9 material like ammonia or something, then the
10 volumes do become very important.

11 MS. GULESSERIAN: Okay, so when you said
12 earlier that your analysis was based on 1.3
13 million gallons of HTF, you're now saying that it
14 doesn't matter how much HTF is used at a project
15 site?

16 MR. LESH: No, I didn't say that. But
17 in this particular case I think the volume did
18 change when the refinement came in.

19 MS. GULESSERIAN: So now there is an
20 additional 1.1 million gallons of HTF on the
21 project site?

22 MR. LESH: The design remains the same
23 except for the volumes. But the design, the
24 safety factors on the design remain the same. It
25 would still be okay in this case.

1 MS. GULESSERIAN: Do you know whether
2 the change of this additional 1.1 million gallons
3 is more HTF in the piping? More stored at the
4 site? What accounts for the change?

5 MR. LESH: I believe it's partly due to
6 more expansion tanks in the system that have
7 secondary containment underneath them. And the
8 other details I don't know exactly.

9 HEARING OFFICER CELLI: The record
10 should reflect it's a quarter after 9:00.

11 MS. GULESSERIAN: I'll just ask a few
12 questions of Ms. Townsend-Hough.

13 MS. TOWNSEND-HOUGH: Hough, like rough
14 and tough.

15 MS. GULESSERIAN: Okay, thank you.
16 Townsend-Hough. Thank you.

17 Okay, in your testimony just now you
18 stated that the soil is placed in a -- you
19 analyzed the soil being placed in a staging area,
20 is that correct?

21 MS. TOWNSEND-HOUGH: Yes.

22 MS. GULESSERIAN: Okay. In the FSA,
23 page 4.9-173, you state that a staging area is
24 allocated in the LTU for storage of HTF-impacted
25 soils while they're being characterized. Is that

1 what you were referring to?

2 MS. TOWNSEND-HOUGH: Yes.

3 MS. GULESSERIAN: Okay. And do you
4 believe that is the same or different than what
5 you heard from Mr. Flack regarding the staging
6 area in the middle of the solar field?

7 MS. TOWNSEND-HOUGH: I'll have to think
8 about what he said.

9 MS. GULESSERIAN: Mr. Flack testified
10 that before moving the soil to the LTU staging
11 area, that you describe in the final staff
12 assessment, they move the soil to a plastic sheet
13 within the solar field. I'm adding that, I don't
14 know, he didn't say it's in the solar field.

15 MS. LUCKHARDT: I would object to that
16 characterization. I think that was simply an
17 example of a place where it could be staged.

18 HEARING OFFICER CELLI: I will --

19 MS. GULESSERIAN: Well, if it's not
20 staged there, she testified that that's where it's
21 staged. Maybe we should --

22 HEARING OFFICER CELLI: I'm not sure of
23 that. What the testimony was, was that there was
24 plastic on the ground and that's where it was
25 loaded up on prior to going to the LTU. Do I have

1 that right? That's what I heard.

2 MS. GULESSERIAN: And did you hear the
3 summary that Mr. Celli just provided regarding
4 this plastic staging area?

5 MS. TOWNSEND-HOUGH: Yes.

6 MS. GULESSERIAN: Do you know where that
7 is proposed to be located?

8 MS. TOWNSEND-HOUGH: On the plant site.

9 MS. GULESSERIAN: Okay. And did you
10 analyze that in the FSA? Did you describe this
11 process or analyze it in the FSA?

12 MS. TOWNSEND-HOUGH: Yes.

13 MS. GULESSERIAN: Okay, could you show
14 me where?

15 MS. TOWNSEND-HOUGH: 4.13-10.

16 MR. BABULA: The second full paragraph.

17 HEARING OFFICER CELLI: While you're
18 looking that up, can you give some sense of how
19 much more there is, Ms. Gulesserian?

20 MS. GULESSERIAN: Less than --

21 HEARING OFFICER CELLI: I note that
22 there's some intrepid character who manages
23 (inaudible) listing, so if you're calling, user
24 number 12, I know you're out there. We'll get to
25 you.

1 I should say for the record, Mr.
2 (inaudible), caller user number 12. We'll find
3 out.

4 Any further cross?

5 MS. GULESSERIAN: Could you please read
6 me, do you have it in front of you what you're
7 reading regarding your analysis.

8 MS. TOWNSEND-HOUGH: Revised figure 7 in
9 the Beacon project design refinement, attachment
10 6, page 8, presents a flow diagram of the
11 management and treatment of HTF-affected soil
12 proposed by the applicant.

13 Spills of HTF at Beacon would be cleaned
14 up within 48 hours, and the contaminated soil
15 would be placed in the staging area of the LTU and
16 covered with plastic sheeting.

17 Samples -- how far do you want me to go?

18 HEARING OFFICER CELLI: There was your
19 plastic sheeting, Ms. Gulesserian, that she just
20 read --

21 MS. TOWNSEND-HOUGH: Yeah, and I don't
22 have the size of the plastic sheeting --

23 MS. GULESSERIAN: Thank you very much.

24 MS. TOWNSEND-HOUGH: -- in there.

25 MS. GULESSERIAN: And so the

1 contaminated soil would be placed in a staging
2 area of the LTU and covered with plastic sheeting.

3 Is that your analysis that you're referring to?

4 MS. TOWNSEND-HOUGH: Yes.

5 MS. GULESSERIAN: Okay. Is there any
6 other analysis in the FSA of the staging of
7 hazardous soils?

8 MS. TOWNSEND-HOUGH: It's in soils and
9 water; it's in the appendices 0--

10 MS. GULESSERIAN: Okay.

11 MS. TOWNSEND-HOUGH: -- E, F and H. I
12 know it's in the Water Resources waste discharge
13 requirements, also.

14 MS. GULESSERIAN: I have no further
15 questions.

16 HEARING OFFICER CELLI: Thank you.
17 Redirect?

18 MR. BABULA: No.

19 HEARING OFFICER CELLI: Thank you. With
20 that, we have received all of the documentary
21 evidence from all of the parties, received into
22 evidence. We've heard from all of your witnesses
23 on all contested areas.

24 We've received all the evidence on
25 alternatives, biological resources, cultural,

1 soil, hazardous materials, waste management,
2 project description - we did take that in,
3 transmission system engineering and visual
4 resources.

5 At this time the record is closed. I'm
6 happy to say that we were able to close the
7 evidentiary record in one day. I want to thank
8 the parties for your efforts. I know it wasn't
9 easy, but I do appreciate everybody's working hard
10 to make it happen.

11 The first thing I have to do now is ask
12 if there is any further public comment to be
13 added. If there are any members of the public who
14 are present and wish to make a comment. I don't
15 have any more blue cards. A showing of hands? I
16 see no showing of hands.

17 Now I'm going to go back on the line and
18 I'm going to un-mute caller user number 12.
19 Hello, caller user number 12 on the telephone, can
20 you hear me? Whoever's on the phone if you
21 wouldn't mind speaking up, please.

22 Is there anyone on the phone line at
23 this time? They went away, they hung up. I
24 didn't mean to scare them.

25 (Laughter.)

1 HEARING OFFICER CELLI: Okay. So,
2 there's no further public comment. The
3 evidentiary record is closed.

4 The parties' opening briefs on all topic
5 areas must be filed no later than 3:00 p.m. on
6 Monday, April 19, 2010.

7 Reply briefs must be filed no later than
8 3:00 p.m. on Monday, May 3, 2010. Copies must be
9 provided to the Committee, the Hearing Adviser and
10 those on the proof of service and mailing lists.

11 The parties shall also provide
12 electronic copies of the above records filings to
13 the Hearing Officer via email in MicrosoftWord
14 format.

15 Now, I want to make a couple of things
16 clear. It's really incumbent upon the parties to
17 frame the issues. So I don't want to hear any
18 whining about I didn't tell you what to brief.
19 You know what the issues are and you're going to
20 brief them.

21 But I'm going to give you some hints.
22 We talked about visual, and that was really
23 between staff and the applicant. You're going to
24 want to give the Committee a clear understanding
25 of what is a significant adverse with regard to

1 the brightness and the contrast, such that it
2 supports a finding of an unmitigable significant
3 impact. We're going to need to know what that is.
4 Home in on that.

5 There was discussion in the transmission
6 system engineering about the 250 megawatts impacts
7 on the LADWP's lines. And there was some
8 discussion about changing the nomenclature. I'm
9 not all that interested in that. But I am
10 interested in addressing the questions that were
11 raised by CURE with regard to the impact studies.

12 Water issues, I suppose, will be framed
13 by CURE. In bio there was discussion for need of
14 surveys and adequacy of mitigation. Ms.
15 Luckhardt, I'm going to ask the applicant to
16 respond to the comments from Lorelei Oviatt from
17 Kern County in a brief. You know what I'm talking
18 about.

19 Hazardous materials, there was much
20 discussion about legal requirements with regard to
21 sampling spills at the location and so forth. I
22 think that it might -- the parties to perhaps
23 touch upon what regulatory underpinnings of hazard
24 materials management.

25 A lot of -- let's put it this way -- a

1 lot of the issues I think that were raised by CURE
2 were responded to by the various parties as, well,
3 there's a regulatory scheme that covers this, or
4 there's a LORS or something like that.

5 I think if there's any open-ended
6 questions about how hazardous materials, waste is
7 going to be managed, then you better be able to
8 point to the LORS that you're relying on, or the
9 regulatory scheme that covers that question.
10 Mostly in the context of hazardous materials.

11 And then, of course, if there are any
12 questions that are left open with regard to -- if
13 there are any conditions of certification that
14 address questions that were raised by the
15 intervenors that I would appreciate it if you
16 could direct our attention to those conditions.

17 Other than that, I need to -- I'm going
18 to cancel the court reporter for tomorrow because
19 we got through it tonight. Thank you very much
20 for saying late. We do appreciate that. I want
21 to thank all of you for staying late.

22 There will be no need for a WebEx phone
23 number or calling in on WebEx, so we will not have
24 a WebEx meeting tomorrow. This is the end of our
25 evidentiary hearings.

1 And so with that, what we'll do next is
2 I'll hand it over to Chairman Douglas, who will
3 adjourn the meeting.

4 MR. BABULA: Can I just make a quick --
5 it's really quick.

6 HEARING OFFICER CELLI: Did I forget
7 something?

8 MR. BABULA: No, no. I just want to
9 thank our Project Manager Eric Solorio. I think
10 that this project -- I don't think -- this has
11 been a two-year process, and I'm sure the
12 applicant won't be sending him a Christmas card,
13 but this project it looks a lot different from
14 what came in. And I think if anybody has any
15 questions about whether there's agency capture
16 among the Commission, they take a look at what
17 came in and what it looks like now, the FSA,
18 there'll be some tremendous changes.

19 And most of that is because of the hard
20 work of Eric and his ability to organize our team
21 and get this information out there. And his
22 diligence in pursuing that. So I just wanted to
23 publicly thank him for that.

24 HEARING OFFICER CELLI: We join in that.
25 In fact, didn't they let you go for a little while

1 there, and put you back on.

2 MR. SOLORIO: It's on a daily basis.

3 (Laughter.)

4 HEARING OFFICER CELLI: Chairman.

5 PRESIDING MEMBER DOUGLAS: All right,
6 well, I'd like to thank everybody who has hung in
7 there for a very long day and we're adjourned.
8 Thank you.

9 (Whereupon, at 9:26 p.m., the hearing
10 was adjourned.)

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CERTIFICATE OF REPORTER

I, MARTHA L. NELSON, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of April, 2010.

s/s Martha L. Nelson

MARTHA L. NELSON,

AAERT CERT

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

s/s Margo D. Hewitt

April 4, 2010

Margo D. Hewitt

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